



2026:DHC:1038



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

% Judgment reserved on: 19.01.2026
Judgment delivered on: 09.02.2026

C.O. (COMM.IPD-TM) 651/2022

SATYA PAULPetitioner

versus

ALKA INDUSTRIAL CORPORATION AND ANR.Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Manvendra Mukul, Mr. J.K. Pandey, Mr. Vivek, Ms. Tripti Saxena, Mr. Mukesh Kumar, Advocates.

For the Respondents : Mr. Subhash C. Jindal, Advocate (Through VC).

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. The present petition has been filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 (hereinafter referred to as '*the Act*') seeking removal, cancellation and rectification of the entry in the Register of Trade Marks with respect to the impugned trademark AiC ARUN bearing Trade Mark No.1524226 dated 17.01.2007 in Class-7, registered in the name of respondent no.1/M/s. Alka Industrial Corporation which was advertised in the Trade Marks Journal No.1431-0 on 01.01.2010 at Page 1175 of the said Journal.

2. Shorn of unnecessary details, the facts stated by the petitioner are that the petitioner is the prior adopter and registered proprietor of the trademark ARUN which was adopted by the predecessor-in-interest of the



petitioner in the year 1962 for sewing machines and parts thereof included in Class-7. Petitioner claims that on 24.04.1996, the said trademark was registered in the petitioner's name. On that basis, the petitioner claims long, uninterrupted and continuous prior use.

3. On 24.04.1976, the trademark ARUN was registered in Class-7, *vide* registration no.314271, the area of allotment being the States of Gujarat, Maharashtra, Karnataka and Tamil Nadu. The petitioner asserts that *vide* registration no.431317B dated 21.12.1984, the trademark ARUN was registered in Class-7 exclusively for the remaining parts of the country. The same trademark ARUN was yet again registered in Class-20 *vide* registration no.1023094 on 04.07.2001. In the interregnum, on 16.06.1999, *vide* registration no.A-56/255/99, the label/wrapper/sticker of ARUN written in artistic manner was also registered.

4. Petitioner claims that since adoption of the trademark ARUN, it has been put to use uninterruptedly and continuously by the petitioner. Petitioner claims to have spent huge amounts of money every year on advertisement and promotion of the goods manufactured by the petitioner for popularizing the trademark ARUN.

5. In order to protect and safeguard its interests in the said trademark and also to prevent piracy by unscrupulous manufacturers and traders, the petitioner had issued numerous caution notices in the newspapers so as to make the general public aware and not be misled by misuse of its trademark ARUN. For abundant precaution, the petitioner claims to have issued numerous circulars to various sewing machines manufacturers, dealers and traders' associations, intimating them about the registration of the trademark ARUN in its favour so as to make even the persons in the same trade aware of the legal status of the said trademark.



6. That apart, the petitioner claims to have taken legal action and filed various suits against individuals, firms and other entities who attempted to infringe and misuse the trademark. Petitioner claims that the suits were successfully decreed in its favour.

7. On the aforesaid basis, petitioner asserts that on account of prior adoption, long, continuous and extensive use coupled with extensive advertisement, enormous sales and strict quality control, the trademark ARUN has not only acquired goodwill and reputation in the market amongst the ultimate purchasers but also has become distinctive to the goods and business of the petitioner.

8. So far as the respondent no.1 is concerned, the petitioner alleges that the respondent no.1 intentionally, deliberately and with a *malafide* motive to trade upon the goodwill and reputation of the trademark ARUN, adopted the deceptively similar and confusing impugned trademark AiC ARUN and consequently caused wrongful loss to the petitioner. The petitioner claims that with *malafide*, the respondent no.1 applied for registration of the said impugned mark on 17.01.2007 in its name, *vide* TM Application No.1524226 in Class-7 which was registered on 01.01.2010 in respect of similar goods i.e., sewing machines and parts thereof.

9. Petitioner claims that the use of mark AiC ARUN by the respondent no.1 is identical to the registered trademark ARUN of the petitioner and is undoubtedly deceptively similar to the trademark of the petitioner. Petitioner asserts that this is bound to create confusion and deception amongst the customers and the persons in the same trade who may be deceived into believing that the goods of the respondent no.1 emanate from the petitioner.



10. By virtue of the registration of trademark ARUN, the petitioner claims exclusivity of the usage thereof, apart from having statutory and common law rights over the said trademark. Correspondingly, the petitioner claims that the registration of trademark AiC ARUN has caused tremendous loss, damage and injury to the goodwill and reputation of the petitioner as well as causing irreparable loss to its business.

CONTENTIONS OF THE PETITIONER:-

11. At the outset, Mr. Manvendra Mukul, learned counsel for the petitioner submitted that, *ex facie*, a bare comparison of the two trademarks as also the label and the trade dress of not only the sewing machines of the parties but also the packaging would amply demonstrate that the impugned trademark is not only closely identical but also deceptively similar to the registered trademark ARUN of the petitioner. According to him, a comparison of these aspects would entitle the petitioner for the relief sought in the petition i.e., cancellation or revocation of the trademark AiC ARUN registered in the name of respondent no.1.

12. Learned counsel emphasized that the triple test of (i) deceptive similarity; (ii) identical/similar class of goods manufactured and; (iii) common/identical consumer base, trade channels and trade associations, is fulfilled in the present case. In that, both the parties manufacture sewing machines or their parts; the purchasers or traders are also identical/common and; the marks ARUN and AiC ARUN are deceptively similar which would clearly cause deception in the mind of the general public.

13. Learned counsel also submitted that while the petitioner is located in Jalandhar, the respondent no.1 is in close proximity in the city of Ludhiana. He submitted that the fact that the petitioner and its predecessors-in-interest have been in this trade from the year 1962 onwards under the trademark



ARUN, was known to respondent no.1. He submitted that it is only with the knowledge of the trademark of the petitioner having garnered immense reputation, goodwill and popularity in the field of manufacture of sewing machines, that dishonestly and with *malafide*, the respondent no.1 got registered the impugned trademark AiC ARUN in its name. He contended that the mark ARUN, the label as also the trade dress indicates that the word mark ARUN is a predominant feature even in the impugned mark. He contended that merely adding the letters "AiC" before the word "ARUN" would not bring it out of the ambit of "deceptive similarity" as per the Act. In fact, according to him, the goodwill, reputation and popularity enjoined with the mark "ARUN" stands diluted by addition of the said letters "AiC".

14. Learned counsel next contended that a mere comparison of the sales figures of the petitioner from the year 2007-08 to the year 2024-25 with those of the corresponding years of the respondent no.1 would clearly establish that the petitioner is far more popular and has achieved goodwill and reputation on the sheer dint of high quality of sewing machines it manufactures and offers for sale, under the trademark ARUN.

15. Referring to the documents to show prior adoption, user and registration of the trademark, learned counsel referred to the registration as a Small Scale Industrial Unit obtained by the petitioner on 05.12.1960. Learned counsel also invited attention to the advertisement issued by the petitioner in various forms which are annexed from Page 725 to 798 of the petition. In order to substantiate its vigilance to protect the trademark ARUN, the petitioner has enclosed the pleadings, orders and decrees obtained in the legal proceedings initiated by it in the last many decades from Page 799 onwards of the paperbook. For further substantiation of its goodwill, reputation and extensive business growth, the copies of bills



issued by the petitioner to various individuals and entities have also been annexed in large numbers.

16. In the context of the respondent no.1, learned counsel invited attention to the publication of the impugned infringing trademark in the Trade Marks Journal No.1431 dated 01.01.2010 in Class-7 appended at Page 54 and 55 of the petition. Learned counsel submitted that apart from the fact that the trademark of the respondent no.1, AiC ARUN is deceptively similar, the said application was submitted only on 17.01.2007 claiming user since 01.04.2004. He vehemently contended that even if this Court were to go by the said date of the application seeking registration or the user so claimed, the impugned trademark in favour of the respondent no.1 is liable to be cancelled/revoked on this document alone.

17. In sum and substance, learned counsel submitted that the impugned trademark AiC ARUN is, (i) phonetically similar; (ii) deceptively similar; (iii) used in respect of the same goods; (iv) in respect of the same consumer base; (v) same class and; (vi) in the present case, the same geographical area of sales. Predicated on the above, learned counsel submitted that the prayers be allowed and the registration of impugned trademark AiC ARUN in the name of respondent no.1 be cancelled or revoked. He relied upon the judgment of Calcutta High Court in ***Shambhu Nath & Brothers & Ors. vs. Imran Khan: 2018 SCC OnLine Cal 7145*** and of this Court in ***Greaves Cotton Limited vs. Mr. Mohammad Rafi & Ors.: 2011 SCC OnLine Del 2596***.

CONTENTIONS ON BEHALF OF THE RESPONDENT No.1:-

18. Mr. Jindal, learned counsel appearing for the respondent no.1 vehemently opposed the submissions addressed on behalf of the petitioner. At the outset and in order to demonstrate that the present petition is



frivolous and has no merits in it so far as the registered trademark AiC ARUN of the respondent no.1 is concerned, he invited attention of this Court to Page 668 onwards of the petition, which are photographs of the sewing machines of the petitioner with the trademark ARUN and those of the respondent no.1 with trademark AiC ARUN alongwith the mark, label, trade dress and packaging. He would submit that *ex facie*, both the trademarks are completely distinct and there is no similarity, much less deceptive similarity between the two. He submitted that though the product, the consumer base and the class of goods may be similar, that by itself would not entitle the petitioner to seek revocation of the registered mark of the respondent no.1. He strenuously argued that there is absolutely no confusion or similarity or deceptiveness between the said trademarks, and apparently, the petition has been filed purely to stifle the competition that the high quality products manufactured by respondent no.1 are providing to the petitioner.

19. Learned counsel further dilated the aforesaid submission by explaining that the prefix "AiC" stands for Alka Industrial Corporation and that by itself would clearly differentiate the two trademarks in question. He also contended, on the basis of research, that the name/mark 'ARUN' is a common generic name used by a number of manufacturers, that too, for the same goods i.e., sewing machines. In other words, he contended that the mark ARUN is not only common to the trade but also is *publici-juris* and as such, there would be no right, rather a prohibition to claim exclusivity or exclusive proprietorship over such descriptive mark/word. In support of his contention in respect of trademark ARUN being common, generic and descriptive over which the petitioner cannot claim exclusivity, learned counsel relied upon the judgment of this Court in *Surya Agro-Oils Ltd. vs.*



Surya Coconut Oil Industries: AIR 1995 Del 72 wherein this Court held that the word 'Surya' is a Hindi name of the sun and that the sun as a center of the solar system having existed for a long time, concluded that no person can exclusively appropriate the word 'Surya' *per se* for himself. For the same proposition, he also relied upon the judgment of this Court in **Himalaya Drug Co. vs. SBL Limited**, CS(OS) 111/2006, decided on 03.06.2010.

20. On the facts obtaining in respect of the registration of trademark AiC ARUN, learned counsel submitted that respondent no.1 had applied for registration of the trademark on 17.01.2007 and during the course of such consideration, a Search Report dated 23.10.2007 was obtained and finally based thereon, the trademark AiC ARUN was advertised in the Trade Marks Journal No.1431 on 01.01.2010 under Section 20 of the Act. He contended that while the application of respondent no.1 was under consideration, no opposition or objection of any nature was registered by the petitioner with the Registry. He stoutly contended that once no opposition or objection is filed by any person in terms of Section 21 read with Section 23 of the Act, particularly within four months from the date of advertisement in the Trade Mark Journal, the certificate having been issued as a consequence thereof, cannot be cancelled or revoked at the whims or instance of the petitioner. He asserted that having failed in filing its objections at the time, the petitioner cannot challenge the issuance of the trademark AiC ARUN in favor of respondent no.1 by the Trade Marks Registry on 12.01.2011.

21. Learned counsel contended that the present petition is clearly not maintainable under Section 47 of the Act as the respondent no.1 had honestly adopted the mark and is a *bonafide* user of the registered



trademark AiC ARUN in respect of sewing machines etc., and the user being much more than three months before the date of application.

22. In order to show distinction and dissimilarities between the two trademarks in question, learned counsel relied upon the following chart:-

Label/Trademark of Petitioner	Label/Trademark of Respondent no.1
There is no prefix (AiC) before ARUN in the trademark.	Prefix 'AIC' in the Trademark means Alka Industrial Corporation (AIC) of the respondent no.1.
The name 'ARUN' appears in a simple form in the logo.	The name 'AiC ARUN' appears in an artistic way in Italic in the logo. Even the design and the font are different.
No Certification of any type appears.	An ISO-9001:2008 certified appears.
Multi coloured stamp of ARUN appears.	Simple stamp of AiC ARUN appears in black and golden colour.
Wrapper on the sewing machine neck is white with printing.	Wrapper on the sewing machine neck is multi coloured and name of Alka Industrial Corporation appears.
The Colour scheme is different as in the case of ARUN, the colour bright black is dominating.	In the case of AiC ARUN, the colour Dull black is dominating and moreover, ARUN is written in the block.
The name of manufacturer - M/s. Satya Paul & Co. appears	The name of manufacturer- M/s. Alka Industrial Corporation (AiC) appears.
Different colour is dominating on the packing.	Dark Blue colour is dominating on the packing.
Registration No.314271 appears.	Registration No.1524226 appears.

23. Learned counsel referred to the trademark application dated 17.01.2007 to submit that the respondent no.1 had *bonafide* and as a honest user, sought registration of trademark AiC ARUN, whereafter the Search Report was obtained on 23.10.2007 which cited the registered trademark ARUN of the petitioner, yet the respondent no.2/Registry granted registration of the mark AiC ARUN in favor of respondent no.1. According to the learned counsel, upon the (i) lack of opposition by any



person including the petitioner and; (ii) lack of similarity or deceptive similarity between the two marks found by the Trade Marks Registry, the registration of the mark AiC ARUN was granted to the respondent no.1. He would contend that the petitioner cannot have any grievance with a procedure followed in accordance with the provisions of the Act and the Rules.

24. Learned counsel next compared the sales figures of the petitioner with that of respondent no.1 to submit that the respondent no.1 is a very small and fledgling enterprise and for FY 2007-2008, at the time of seeking registration, had sales completely overshadowed by that of the petitioner. He would submit that the existence of the respondent no.1 and the sales figures it reaches would not dent the petitioner in any possible way. He further submitted that comparing the sales figures of the petitioner from FY 2007-08 to the sales in FY 2024-25 which shows steady increase and growth, it would become evident that the sales or business of the petitioner has not been impacted at all by the registration of trademark AiC ARUN by the respondent no.1. Thus, the petition, on that score too, be dismissed.

ANALYSIS & CONCLUSION:-

25. This Court has heard the submissions of learned counsel for the parties, perused the documents and considered the judgements relied upon.

26. At the outset, it is noted that respondent no.1 has been unable to rebut or counter the assertion of the petitioner that it had coined, adopted and started using the mark ARUN since the year 1960 through its predecessors-in-interest. As per the record, the SSI Registration of the petitioner is of the year 1960; the registration of the trademark ARUN in Class-7 was granted on 24.04.1976 for the States of Gujarat, Maharashtra, Karnataka and Tamil Nadu; the registration of the trademark ARUN in



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Class-7 was granted on 21.12.1984 for the remaining parts of the country; the registration of the trademark ARUN in Class-20 was granted on 04.07.2001; and the copyright registration for the artistic work on the label(wrapper/sticker of ARUN was granted on 16.06.1999. Thus, there is overwhelming documentary evidence in the form of proper registrations under the Trade Marks Act, 1999 and the Copyright Act, 1957 that the petitioner is clearly much prior in time to the respondent no.1.

27. The petitioner has also placed on record documents indicating continuous use of the trademark ARUN as well as the promotions and advertisements to promote its products under the said trademark. Some of such documents are reproduced hereunder:-

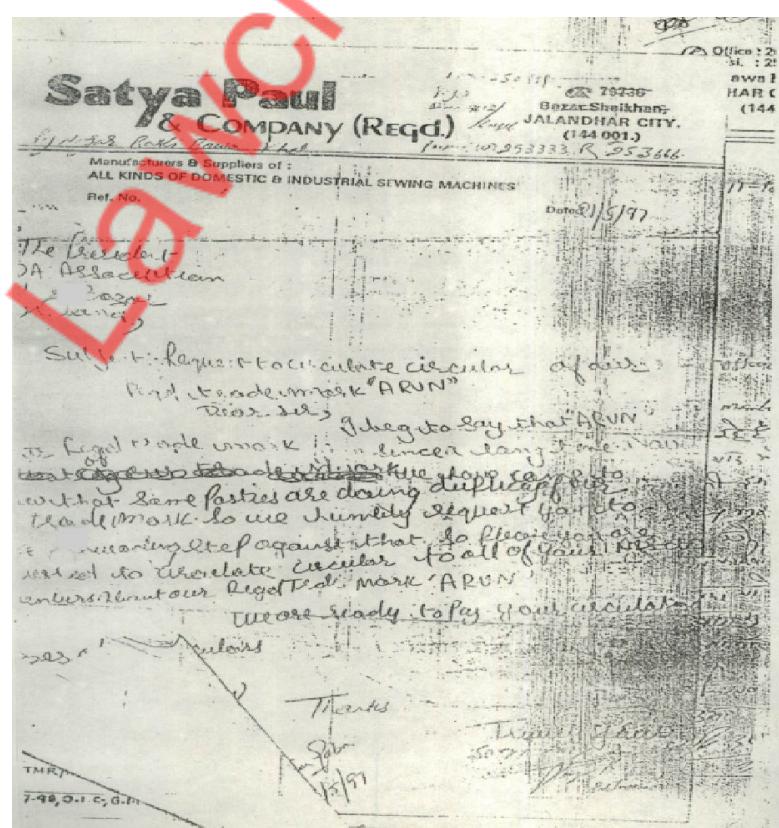
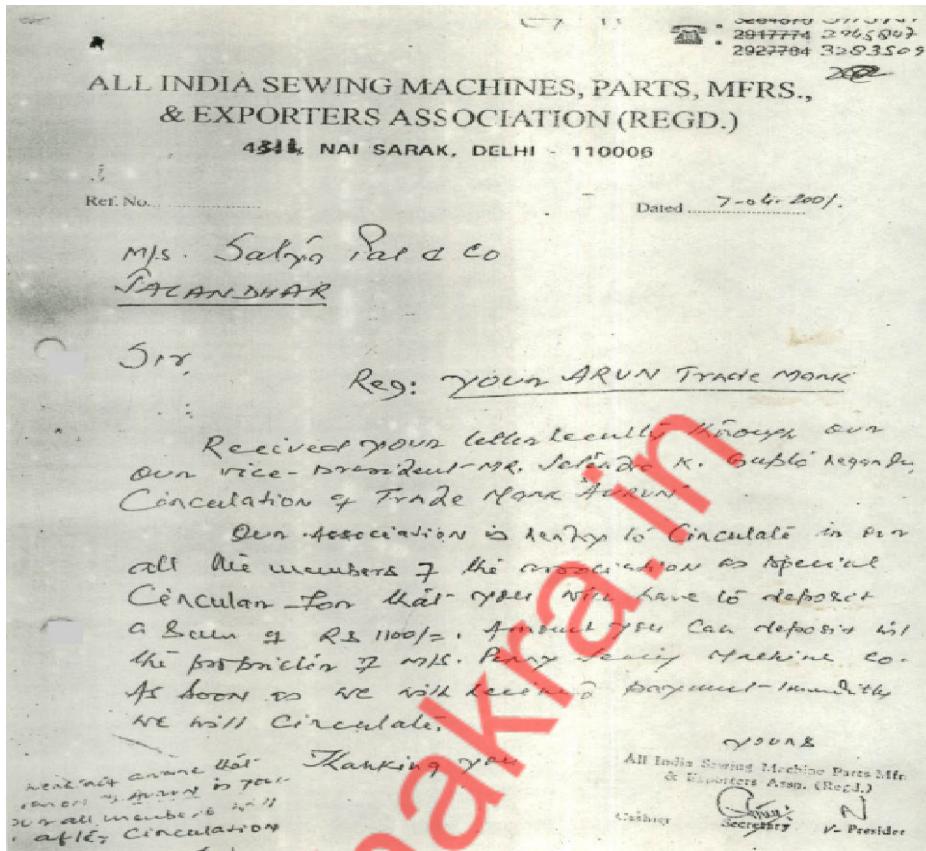






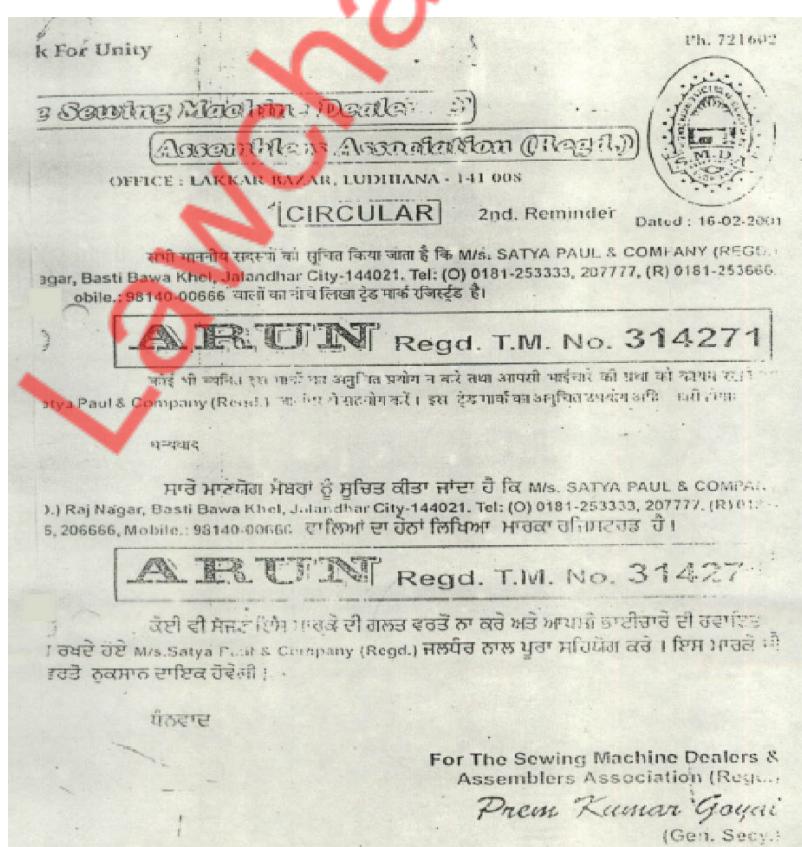
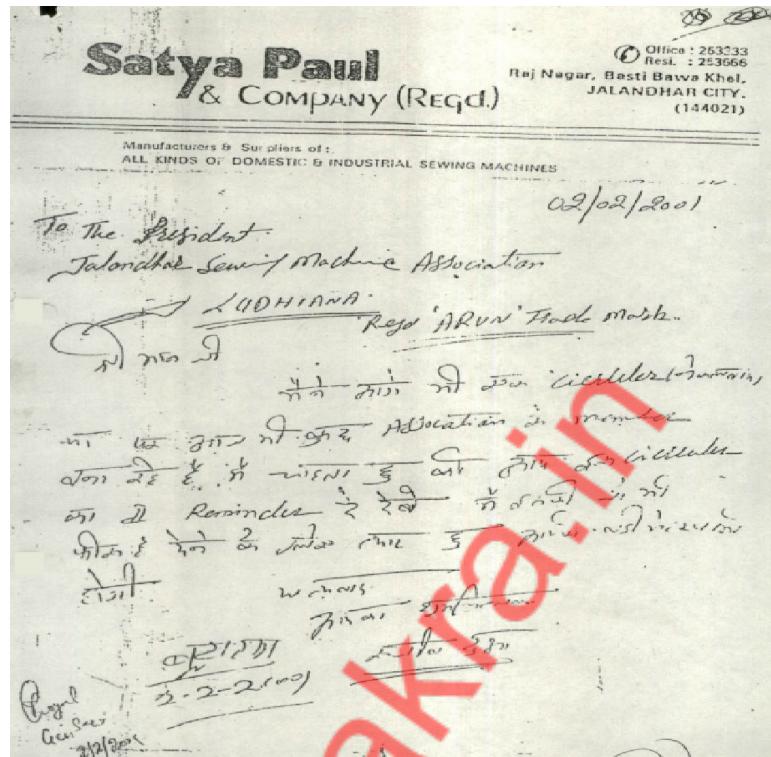


28. The petitioner has also asserted that in order to keep the unscrupulous persons at bay and to caution the members of the same trade as also the general public not to get misled or deceived into buying inferior products, it had issued caution notices and circulars to various sewing machines manufacturers, dealers and traders associations, who in turn had also issued circulars in this regard to their dealers, which have been annexed to the petition. Some of them are as reproduced hereunder:-





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29. The petitioner has also placed some orders, judgements and decrees passed in its favour by Courts of law in order to establish the seriousness and diligence with which it had protected its registered trademark. Details of some of such orders are presented hereunder:-

S.No.	Case details	Date of Decision
1.	Civil Suit no.1/2002, <i>M/s. Satya Paul & Company vs. M/s. Patel Marketing</i>	06.02.2003
2.	Civil Suit no.1/2003, <i>M/s. Satya Paul & Company vs. M/s. Sudhir Sales</i>	02.08.2003

30. The petitioner has also filed, with the petition, the sale figures from the years 2007 to 2025, which also indicate the tremendous growth and success that the products of the petitioner under the said trademark achieved in the last many decades. The said figures also reflect the growth in popularity and are a testament to the high and consistent quality of its products, i.e., sewing machines. The CA Certificate indicating the sales figures of the petitioner is extracted hereunder:-

LAW OFFICES

GSTIN: 03AACFS7793E126	SATYA PAUL & COMPANY (REGD.)		Phone: 9781682222 Mobile: 9814000666 E-mail: satya_paul_and_co@yahoo.com Web: www.arunssewingmachine.com																																										
	RAJ NAGAR BASTI BAWA KHEL JALANDHAR CITY, PIN: 144021 PUNJAB TO WHOM IT MAY CONCERN		2																																										
Ref. No. : 0005			Dated: 05/12/2025																																										
ANNUAL SALES RECORD FROM FIN YEAR 01-04-2007 TO 05-12-2025 UP TO DATE AS PER OUR BOOKS, VAT/GST & INCOME TAX RETURNS RECORD OF OUR "ARUN" BRAND																																													
<table border="1"><thead><tr><th>YEAR</th><th>SALES</th></tr></thead><tbody><tr><td>2007-2008</td><td>8142703-00</td></tr><tr><td>2008-2009</td><td>7335669-00</td></tr><tr><td>2009-2010</td><td>7440360-00</td></tr><tr><td>2010-2011</td><td>8677577-00</td></tr><tr><td>2011-2012</td><td>8911265-00</td></tr><tr><td>2012-2013</td><td>9118593-00</td></tr><tr><td>2013-2014</td><td>10776423-00</td></tr><tr><td>2014-2015</td><td>10764599-00</td></tr><tr><td>2015-2016</td><td>13127751-00</td></tr><tr><td>2016-2017</td><td>14150303-00</td></tr><tr><td>2017-2018</td><td>19288200-00</td></tr><tr><td>2018-2019</td><td>16183023-00</td></tr><tr><td>2019-2020</td><td>20028678-00</td></tr><tr><td>2020-2021</td><td>19337301-00</td></tr><tr><td>2021-2022</td><td>15368040-00</td></tr><tr><td>2022-2023</td><td>13567229-00</td></tr><tr><td>2023-2024</td><td>23957646-00</td></tr><tr><td>2024-2025</td><td>20904439-00</td></tr><tr><td>TOTAL SALES</td><td>247079799-00</td></tr><tr><td>2025-2026 UP TO DATE SALE</td><td>15063481-00</td></tr></tbody></table>				YEAR	SALES	2007-2008	8142703-00	2008-2009	7335669-00	2009-2010	7440360-00	2010-2011	8677577-00	2011-2012	8911265-00	2012-2013	9118593-00	2013-2014	10776423-00	2014-2015	10764599-00	2015-2016	13127751-00	2016-2017	14150303-00	2017-2018	19288200-00	2018-2019	16183023-00	2019-2020	20028678-00	2020-2021	19337301-00	2021-2022	15368040-00	2022-2023	13567229-00	2023-2024	23957646-00	2024-2025	20904439-00	TOTAL SALES	247079799-00	2025-2026 UP TO DATE SALE	15063481-00
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SATYA PAUL & CO (REGD.)
Rajan Dua
PAN: 03AACFS7793E126



31. The overwhelming documentary evidence placed on record by the petitioner clearly indicates, (i) the establishment of the petitioner since the year 1960 through its predecessors-in-interest; (ii) the adoption of the mark ARUN since the year 1962; (iii) the long, uninterrupted and continuous user of the trademark ARUN; (iv) the trademark registration of the mark ARUN in the years 1976, 1984 and 2001; (v) the copyright registration of label(wrapper/sticker of ARUN in the year 1999; (vi) the promotions and advertisements undertaken to promote the products manufactured under the trademark ARUN; (vii) the caution notices/circulars and various judgements and decrees passed in favour of the petitioner regarding the trademark ARUN as steps taken by it to protect the said trademark, and; (viii) the steady growth in sales figures indicating the popularity of the products manufactured by the petitioner under the trademark ARUN and the high quality of such products, having acquired tremendous goodwill, reputation and distinctiveness.

32. In contradistinction, the respondent no.1 admittedly applied for registration of its mark AiC ARUN on 17.01.2007 with user claimed from 01.04.2004. The said application was accepted and published in the Trade Marks Journal No.1431 dated 01.01.2010 in Class-7. Undoubtedly, trademark of the respondent no.1 was applied for and registered much after the petitioner. It is relevant to also note that the petitioner as well as the respondent no.1 have their manufacturing facilities in close proximity to each other, in that, petitioner is based in Jalandhar while respondent no.1 in Ludhiana, both in the State of Punjab. The registration of marks of the parties are in Class-7, while the petitioner has also obtained registration of trademark ARUN even in Class-20 apart from obtaining registration of Copyright in the label/device/sticker of ARUN, all of which are also prior



in time to that of respondent no.1. Undeniably, even the trade circle and consumers are common.

33. It is also clear that the mark ARUN and AiC ARUN are deceptively similar if not nearly identical. It is not denied by respondent no.1 that in the Search Report dated 23.10.2007, the mark of the petitioner was cited and yet the respondent no.1 proceeded to get its mark AiC ARUN registered. The argument of learned counsel for the respondent no.1 that the mark ARUN is common to Class-7 goods being manufactured by both the parties and thus, there is neither any distinctiveness nor exclusivity attached to the said mark and that it is generic in nature, is unpersuasive. This is for the reason that the petitioner has placed on record substantive material in the form of documentary evidence of its ~~existence~~ as far back as the year 1960 and has furnished proof of the mark ARUN being used by it continuously and uninterruptedly since the year 1962 and the said mark was registered in the year 1976 in Class-7 for sewing machines and its parts. It has not only advertised and promoted the mark and brand ARUN extensively, but has also taken substantive steps to protect its trademark in the nature of caution notices in papers and trade circles as also approached the Courts of law and obtained favourable judgements and decrees. It has also obtained copyright in the year 1999 for the label/wrapper/sticker of ARUN written in artistic manner. Thus, the petitioner has been able to fairly evidence the long, uninterrupted and continuous use of its mark. Apart from a bald contention that the mark ARUN is common to the class and/or that other entities are also using the same mark, nothing substantive in the form of any documents etc., has been brought on record by the respondent no.1. Thus, this contention too is unmerited.

Non-objection



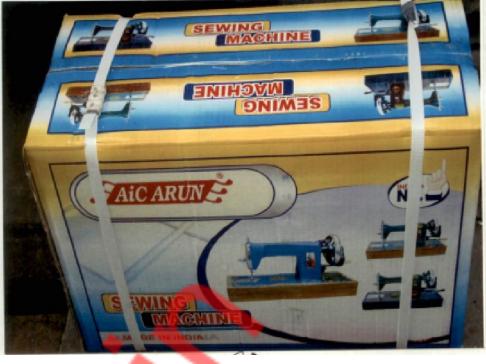
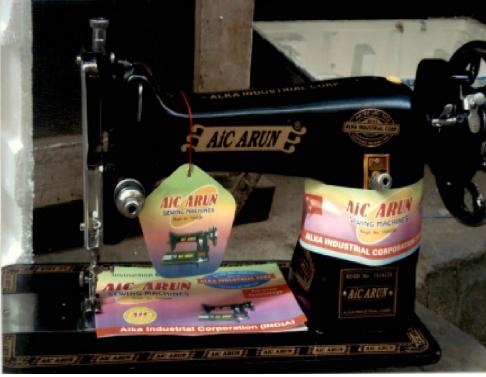
34. Yet another aspect for this Court to consider is the sales figures of the petitioner since FY 2007-08 (Rs.81,42,703/-) to FY 2024-25 (Rs.2,09,04,439/-) evidenced by the Certificate dated 05.12.2025 issued by its Chartered Accountant. In comparison, the corresponding figures of the respondent no.1 from FY 2007-08 (Rs.10,800/-) to FY 2024-25 (Rs.4,54,150/-) for the sales achieved is nowhere near the petitioner. It can therefore be safely inferred that the trademark ARUN has attained credible goodwill, reputation and exclusivity.

35. It would be appropriate to compare the two marks to appreciate the confusion and deception that may be caused in the mind of the general public. The same are extracted hereunder:-

PETITIONER	RESPONDENT NO.1
	

It would also be apposite to compare the label and packaging of the goods of petitioner and respondent no.1 which are as under:-



PETITIONER	RESPONDENT NO.1
	
	
	

36. Having regard to the entire factual conspectus and the aforesaid comparison between the marks of the petitioner and respondent no.1 alongwith the label and packaging of the goods of both parties, this Court has no doubt that the trademark AiC ARUN of the respondent no.1 is deceptively similar to the trademark ARUN of the petitioner. The use of the word/letter/prefix “AiC” does not draw any distinctiveness or distinction



between the two trademarks, the essential and dominant component of the mark being “ARUN”. An ordinary person with average intelligence and imperfect recollection is bound to get confused or deceived by the goods manufactured by the respondent no.1, carrying the impugned mark as well as the label and packaging, deceptively similar to that of the petitioner.

37. So far as the submission of the learned counsel for the respondent no.1 on the applicability of Sections 21 and 23 of the Act to contend that the petitioner is barred from approaching this Court is concerned, the same too is untenable and unfounded. This is for the reason that the Legislature has not only provided to the entities/individuals a right to oppose the registration of a trademark of an entity or an individual at the stage of pendency of the applications for registration of trademarks but has also conferred rights to the parties to seek revocation/rectification of such trademark by seeking cancellation or variation thereof, by an order for rectification of the Register of Trade Marks, by the Registrar or by the High Court as per Sections 47 or 57 of the Act, as the case may be. Thus, to contend that once a party has not filed its opposition to the registration of trademark under Section 21 of the Act, such party would be disentitled from challenging the same for all times to come, would be contrary to the very letter and spirit of the Act. If this interpretation is acceded to, it would invariably result in an anomalous and incongruous situation. In that, those persons, who may have opposed a particular mark being applied for registration, would form a different class while those not having opposed the application at the stage of its consideration, yet may be genuinely aggrieved, would form another set of class. Take a case where a person who already has a mark genuinely registered in his name, for some reason, is unable to, or does not have the opportunity to oppose an identical or



deceptively similar mark. In that context, if one were to apply the rationale behind the contention raised by respondent no.1, such person shall forever lose the opportunity to avail of any remedy at all to challenge the mark which may be identical or deceptively similar to his registered trademark. In juxtaposition, a person who may have availed the opportunity to oppose the application seeking registration of a mark, would have remedies available in the Act to assail the rejection of the opposition by way of a further appeal. There cannot be a class within a class, unless based on intelligible differentia. No such rationale or intelligible differentia has been urged or demonstrated. Apart from creating upheaval in the registration of trademarks, it would create an insurmountable situation, what with many registrants/stakeholders for the same or identical trademark. Law cannot countenance such anomalies or incongruity. It is manifest that the provisions of Sections 47 and 57 of the Act have been engrafted to overcome such an anomalous and incongruous situation. Similarly, the arguments predicated on the provisions of Section 23 of the Act are equally unsustainable and cannot be acceded to. *Ergo*, the said contentions are unmerited.

38. Respondent no.1 relied upon the judgment in *M/s. Surya-Agro Oils Ltd. (supra)* to contend that the mark ARUN is a common and generic name and thus, cannot be exclusively appropriated by the petitioner. As held above, respondent no.1 was unable to demonstrate that the word ARUN is common, generic or is in use by many other entities in the same class or that the use of such mark by the petitioner has not attained exclusivity. Thus, when on facts, the respondent has failed to establish or substantiate its contention, the reliance upon the judgement in *M/s. Surya-Agro Oils Ltd. (supra)* is inconsequential. So far as the reliance upon the



judgement in **Himalaya Drug Co. vs. SBL Limited**, CS(OS) 111/2006, decided on 03.06.2010 of the learned Single Judge is concerned, it may be necessary to point out that the said judgement was taken in appeal before the learned Division Bench of this Court in **The Himalaya Drug Company vs. M/s S.B.L. Limited**, RFA(OS) 90/2010 which was decided on 09.11.2012. It is pertinent to point out that the Division Bench had overturned the judgement of the learned Single Judge and observed as under:-

"24....In the decision reported as (1945) 65 RPC 62, Aristoc v. Rysta decided by the House of Lords, it was held that the comparison of trademarks was a matter of first impression, but the mark "Rysta" too closely resembled mark "Aristoc" phonetically and it would be liable to lead to deception and confusion.

25. After having considered the above mentioned decisions, it is clear to us that it is not the right test of a meticulous comparison of two marks, letter by letter and syllable by syllable. It is the person who only knows the one mark and has perhaps an impression, or imperfect recollection of it, who is likely to be deceived or confused. In fact it depends on first impression of a person. In case he is aware or familiar with both rival marks of the parties he will neither be deceived or confused. The degree of similarity between the two rival marks and which depends upon the first impression whether visual or phonetic and in case court finds that there is a risk of confusion which is the public interest should not be authorised. The question is merely the dispute of inter se between the parties but it is matter of right by the registered proprietor who got the exclusive rights to protect the same, otherwise, many competing marks would be available in the market in due course and uncertainty might happen in case the infringer is allowed to use similar mark.

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58. Once we arrive at the finding that the Liv.52 mark is conclusive in registration without any challenge as per section 32, then the conclusion would be that the use of the expression LIV in isolation is an infringement of the prominent feature of the plaintiff's registered trade mark. As the defendant is using the mark LIV in isolation, therefore, the defendant is not entitled to use the same. However, we permit the defendant, if so advised, that the defendant may use the mark containing the expression LIV not written in isolation and is accompanied by suffixes, examples of which are given in the written statement i.e. LIVOGEN, Livpar, Livosin, LIVAPLEX, LIVOFIT, LIVA, LIVOL, LIVDRO, LIVAZOL, LIVERITE, LIVERJET, LIVERNUT, LIVERPOL,



LIVUP. At this stage, we wish to recall the submission of the Mr. Hemant Singh, learned counsel that the plaintiff that the plaintiff has no objection if the defendant may use the word LIV alongwith suffixes which may not be visually, phonetically or structurally similar to the trade of the plaintiff.

59. For the aforesaid reasons, we allow the appeal. The judgment and decree dated 3rd June, 2010 is set aside. Suit of the plaintiff with regard to infringement of trade mark is decreed. The defendant is restrained from using the mark LIV as part of its trade mark LIV-T while dealing with the medicinal preparations....”

39. The petitioner relied upon the judgement in **Greaves Cotton Ltd.** (*supra*), in particular, para nos.24 and 25, which is extracted hereunder:-

“24.....The defendant before this Court has thus, been manufacturing and selling the same product under the trade name “GREAVES INDIA”, which the plaintiff company has been manufacturing and selling under its registered trade mark “GREAVES”. By using the word “GREAVES INDIA” the defendant No. 1 lifted and adopted the whole of the registered trademark of the plaintiff company, thereby causing infringement of that trade mark. Mere use of the word “INDIA” would make no difference since the word “GREAVES” is not only an essential but also the main component of the trademark “GREAVES INDIA” being used by the defendant No. 1. Use of the word “INDIA” as a suffix and not as a prefix is also a strong indicator that the defendant No. 1 wanted to encash upon the popularity, goodwill and reputation of the word “GREAVES” engines not only in India but in many other countries. In fact had the defendant No. 1 used the word “INDIA” as prefix even that, in my view would have constituted infringement, in facts and circumstances of this case. It would be pertinent to note here that the defendant No. 1 has not given any reason or explanation for use of the word “GREAVES” which is the most essential component of his trademark. During cross examination, he could not even give any meaning to the word “GREAVES”. This clearly shows that the adoption of the word “GREAVES” by the defendant was dishonest, actuated with the intention to encash upon the tremendous reputation which the registered trademark of the plaintiff enjoys in the market. It would also be appropriate to note here that “GREAVES” is not a dictionary word and is alleged to be the surname of the founder of the plaintiff company. Neither deletion of a part of a registered trademark nor the prefix or suffix of another word to it would validate the use of the registered mark



by an unlicensed user, once it is shown that the part used by the infringer is an essential part of the registered trademark.

25. It also in interest of the consumer that a well established brand such as "GREAVES" is not to be allowed to be used by another person. A person purchasing pumping sets being sold by the plaintiff company under the name "GREAVES", when he comes across the product of the defendant No. 1 being sold under the trade name "GREAVES INDIA", on account of imperfect recollection and his not having the product of the plaintiff with him at that time, may form an impression that both the products emanate from the same source and that is why both of them are using the word "GREAVES" for selling similar products. This may cause confusion in the minds of the consumers. Also, if the quality of the product of the defendant No. 1 is not found to be as good as the quality of the product of the plaintiff, the consumer may feel cheated; he having paid the price which the product of the plaintiff commands in the market and he may also form an opinion that the quality of the product of the plaintiff had gone down and that is why the product purchased by him was found to be of inferior quality. For the reasons given in the preceding paragraphs, the plaintiff is entitled to injunction against use of the trademark "GREAVES" by the defendant No. 1. The plaintiff is also entitled to mandatory injunction directing the defendant No. 1 to withdraw his application submitted to trade mark registry for registration of the mark "GREAVES INDIA". The issues are decided against the defendant No. 1 and in favour of the plaintiff."

40. It is clear from the appreciation of the principles laid down by the learned Division Bench of this Court in ***The Himalaya Drug Company (supra)*** and learned Single Judges' judgement in ***Greaves Cotton Ltd. (supra)*** that the view taken above by this Court is in consonance and conformity with those principles.

41. Having regard to the fact that the respondent no.1 has claimed use of the mark AiC ARUN from the year 2004 which was registered in the year 2010 in Class-7 coupled with the fact that the sales figures are not so much as to affect the petitioner and is very localised, this Court deems it fit, in terms of the provisions of Section 57, to direct variation by directing



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deletion of the word “ARUN” from the trademark “AiC ARUN”, registered in favor of the respondent no.1, bearing registration no.1524226 and permit the respondent no.2 to continue to manufacture goods under Class-7 and offer them for sale retaining the mark “AiC” for such products. The respondent no.1 is at liberty to add word before or after “AiC” so as to comply with safe distance rule and is clearly distinct from that of the petitioner.

42. With the aforesaid directions, the petition is allowed and the respondent no.2/Registrar of Trade Marks is directed to carry out the variation by rectifying the Register of Trade Marks. The direction be complied with within 6 weeks from date.

43. The petition is disposed of with pending applications if any, in terms of the above directions.

44. A copy of this judgment be forwarded to the Registrar of Trade Marks for compliance.

**TUSHAR RAO GEDELA
(JUDGE)**

FEBRUARY 09, 2026
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