

(2018) 07 IPAB CK 0005

In the Intellectual Property Appellate Board

Case No : ORA/4/2018/TM/MUM

Maresh Namkeen Pvt. Ltd.

APPELLANT

Vs

Rajesh Kumar Singhwani And Ors.

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Trade Marks Act, 1999 — Section 9(1), 11(1), 11(2), 20(1), 20(2), 21, 22, 47, 56(4),
57, 57(4), 58, 58(1)(d), 128
Trade Marks Rules, 2002 — Rule 41

Citation : (2018) 75 PTC 359 (IPAB)

Hon'ble Judges : Manmohan Singh, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : S.K. Bansal, Aparna Jain, Shaishav Manu

Final Decision : Disposed Of

Judgement

Manmohan Singh, J

1. The petitioner has challenged the impugned trade mark 'MAHESH' under No. 1698451 in class-30 by way of rectification petition before the Registrar of Trade Marks Mumbai under rectification no. 264254 and the same is pending for disposal. The said rectification petition was filed against the registered trade mark 'MAHESH' with description of goods to read as 'MADHURAM SWEETS'. By this order, we propose to decide the rectification petition bearing no. 1698451 in class 30 in the name of Rajesh Kumar Singhwani trading as 'M/s. Mahesh Namkeen Centre'. As a matter of fact, the above petition was mentioned before us on 7th May, 2018 as the urgent matter where the notice was issued and following order was passed:-

"The counsel for the Applicant mentioned for listing of the matter for urgent hearing before this bench, during the course of the arguments it is observed that the application involves question of law with regard to issuance of registration certificate to the Respondent herein. Both the counsels submitted the respective

submissions and have agreed as well consented for fixation of early date for final disposal of this Application and both the parties have further consented for listing of the matter for final hearing at Delhi circuit bench sitting.

Further liberty is granted for the parties to submit their respective written synopsis in the meanwhile the respondent sought time to file Counter statement with the advanced copy to be sent to Applicant before the next date.

List this matter for final hearing on 28/05/2018 at Delhi circuit Bench."

2. It is pertinent to mention that after passing the said order, it appears that the respondent no. 2 on the same date has issued a letter dated 7.5.2018 to the respondent no. 1. The main content of the letter read as under :-

"Sub: Trade Mark Application No. 1698451 in class 30 Trade Mark MAHESH - reg.

Sir,

I am directed to state that application No. 1698451 in class 30 was filed on 12/06/2008 for the registration of trade mark 'MAHESH' in respect of specification of goods as "Namkeen and Sweets" in the name of Mr. Ramesh Kumar Singwani trading as M/s. Mahesh Namkeen Centre, Madhya Pradesh, but inadvertently "Maduram Sweets" was entered as specification of goods. The application was examined and it was published as Advertised Before Acceptance in Trade Marks Journal No. 1430 dated 16/12/2009 and eventually registration certificate was generated accordingly in respect of goods as "Maduram Sweets". On your request dated 10/04/2018 and 23/04/2018 the office had inadvertently modified the goods as "Namkeen and Sweets (as per TM-1) and generated a registration certificate with correct data accordingly. It is mentioned that item "Namkeen and Sweets" was neither considered at examination stage nor the same was published in the Trade Marks Journal and as such it cannot be included in the registration certificate as per law.

I am further directed to state that the registration certificate issued in respect of application No. 1698451 is hereby cancelled and the application is sent for re-examination after correcting the application detail as per TM-1. In view of the above, you are directed to deposit the original registration certificate dated 11/01/2011 as well as registration certificate with correct data dated 24/04/2018 in this office."

3. While sitting in Delhi region, the counsel for the respondent no. 1 mentioned the matter on 11.5.2018 and filed the urgent application in view of the letter issued by the respondent no. 2. The following order was passed on the said date:

"Urgent application has been filed by Mr. Rajesh Kumar Singhwani, trading as M/s. Mahesh Namkeen Centre along with application, the letter dated 07.05.2018 has also been filed whereby the registration of the respondent no. 1 bearing trade mark No. 1698451 in class 30 has been cancelled. The copy of the application is handed over to the learned counsel for the respondent. Let the

reply be filed by the Respondent by 28/05/2018. In the meanwhile the operation of the letter of Examiner of Trade Mark & GOI dated 07.05.2018 shall remain stayed."

4. In the meanwhile, parties have also completed the pleading and have made their submission on the date i.e. 28.05.2018. The orders were reserved after hearing the main-appeal and misc. interim applications. Few facts of the matter is that the petitioner is claiming the ownership of the trade mark 'MAHESH' in respect of Namkeet and Sweets. Fresh registrations have been obtained by the petitioner in class 30 which are mentioned in the rectification petition. The case of the petitioner is that they are the prior user of the said trade mark 'MAHESH' whether it is written in Hindi or English. The controversy between the parties is that on 12.6.2008, the respondent no. 1 has applied for registration of the trade mark 'MAHESH' bearing application no. 1698451 in class 30 in respect of Namkeen & Sweets claiming user since 5th August, 2000. The said application was advertised in Trade Mark Journal no. 1430 dated 16.12.2009. However, in the advertisement, the description of goods were mentioned as 'MADHURAM SWEETS' No opposition was filed to the said advertisement and the trade mark was duly registered in favour of the respondent no. 1 in respect of MADHURAM SWEETS'. The registration certificate was issued on 11th January, 2011. The said trade mark was subsequently renewed upto 26th June, 2028.

5. It is pertinent to mention that the petitioner herein in April, 2018 filed a suit against the respondent no. 1 being TM No. 27/2008 in the court of Addl. District Judge, Patiala House Courts, New Delhi along with the misc. applications. The said suit was listed before the Addl. District Judge in March, 2018 and after issuing the summons, the interim order was passed against the defendant from using trade mark 'MAHESH'. The local commissioner was also a party to seize the goods appearing the mark 'MAHESH'. Thereafter, the respondent no. 1 filed the application for vacation of the interim order which was duly vacated. It is evident that in the suit proceeding, it has come to the notice of the petitioner that the respondent no. 1 is holding the registration of the trade mark 'MAHESH' in respect of namkeen and also and in fact the respondent no. 1 has applied in respect of namkeen & sweets.

6. It appears from the record that after vacation of the order in civil suit, the respondent no. 1 has made a representation before the respondent no. 2 on 10.4.2018 requesting that due to oversight, the description of goods are wrongly mentioned in the trade mark as well as in the certificate as 'MADHURAM SWEETS' instead of 'Namkeen & Sweets'. The contents of the said letter dated 10th April, 2018 read as under: -

"The Registrar of Trade Marks

Trade Marks Registry

Mumbai

Respected Sir,

Re.: Registration No. 1698451 for registration of the trade mark 'MAHESH' in Class 30 in the name of Mr. RAJESH KUMAR SINGWANI, proprietor of M/s. Mahesh Namkeen Centre

We state that the application for registration of the above trade mark has been filed in respect of 'Namkeen & Sweets' fall in Class 30 in the name of Mr. Rajesh Kumar Singwani, proprietor of M/s. Mahesh Namkeen Centre.

However, on recent perusal of the Status Data of the Trade Marks Registry, we found that, though an inadvertent oversight, the name of the Applicant has been wrongly mentioned as 'RAJESH KUMAR SINGWAMI' instead of 'RAJESH SINGWANI' and the goods has been wrongly mentioned as 'Madhuram Sweets' instead of 'Namkeen & sweets'. We enclose copies of the application, presentation and Status Data for your ready reference.

We therefore request your Honour to kindly rectify the name of the applicant as 'RAJESH SINGWANI' and goods as 'Namkeen & Sweets' at the earliest as we are contesting in a Litigation before the Hon'ble Court. Yours truly,

For M/s. IPR Law Associates (Mumbai)

(Ruchika Punjabi)

Advocate"

7. On 24.04.2018, fresh registration certificate was issued to respondent no. 1 in the same registration correcting the earlier registration certificate where the description of goods was amended from 'MADHURAM SWEETS' to 'Namkeen & sweets'. On the certificate, it is mentioned that the same is corrected under the directions of the Registrar on 24.4.2018.

8. The grievance of the petitioner is that such corrections are substantial correction. The petitioner was the aggrieved party. The corrections were made (the suit against the respondent no. 1 was pending) without the notice to the petitioner who is claiming a valuable rights bearing the trade mark 'MAHESH' particularly in respect of 'namkeen'. The other grievance of the petitioner is that had the trade mark was advertised in the Trade Mark Journal in proper manner in relation to namkeen & sweets, it ought to have opposed the same by filing the notice of opposition.

9. The next grievance of the petitioner is that the petitioner missed the opportunity to file the opposition which could have been filed by the petitioner or any third party as per the scheme of the act. Since the mark was not advertised in respect of Namkeen & sweets (as applied for and it), it was merely advertised in respect of 'MADHURAM SWEETS', the rights of the petitioner were going to be effected at the time of correction on 24.4.2018. At the best the respondent no. 2 instead making the correction in the registration certificate should have re-advertised in the Trade Mark Journal for various provisions of the Act. The said

correction is unauthorized, it could not have been done suo moto without the notice of the petitioner whose civil action against respondent no. 1 is also pending for the same subject matter. The learned counsel for the petitioner has tried to justify the letter dated 7th May 2018 issued by the respondent no. 2 to respondent no. 1 for cancellation of the subsequent certificate issued on 24th April, 2008 after realizing its mistake within the powers given under Section 57 of the Trade Mark Act, 1999. His submission is that as far as the trade mark of earlier registration certificate granted for 'MADHURAM SWEETS', the rectification was already pending.

10. With regard to the correction made by the Registrar on 24.4.2018, the present rectification has been filed, the submission of the counsel is that the respondent no. 1 was fully aware about all the events mainly that earlier certificate was issued in January, 2011 and subsequent to the said certificate, the respondent no. 1 filed the fresh application for registration of the trade mark 'MAHESH' in respect of 'namkeen'. Thus, in the representation subsequent to vacation of interim-order, incorrect statement was made. The representation was made by the respondent no. 1 in the trade mark office on 10.4.2018 with the mala-fide intention as the respondent no. 1 was aware that the communication was given by the respondent no. 1 that only recently the respondent no. 1 came to know such mistake because the respondent no. 1's fresh application for namkeen was pending. There is a gap of almost seven years, how the respondent no. 1 was not aware the registration certificate which was issued in 2011, the error was not noticed by the respondent no. 1 for such a long period of time. It was merely an offer thought and the letter was written with malafide intention and got the relief at the back of the petitioner.

11. The learned counsel for the respondent no. 1 states that there is no fault of respondent no. 1 who has applied for registration of the trade mark 'Namkeen & sweets' on 12.7.2008 claiming user since 5th August, 2000. It was an error on the part of the respondent no. 2 who advertised the mark in relation to the goods 'MADHURAM SWEETS' instead of 'namkeen & sweets'. The counsel stated that the main business of respondent no. 1 is namkeen, the said trade mark is being used for the last about 18 years, therefore, why the respondent no. 1 should suffer because of the mistake of the respondent no. 2. As and when it came to the notice of the respondent no. 1 that there is a mistake on the part of respondent no. 2, the representation was made. The respondent no. 1 is not an educated person, therefore, he did not notice the said mistake committed by the respondent no. 2, therefore, the representation was rightly made before the respondent no. 2 for correction. The counsel has also submitted that the respondent no. 2 within his powers and discretion granted the fresh registration certificate after making correction on 24.4.2018 and no notice and hearing was required for such a small correction.

12. It is also stated by both the parties that now the interim application filed by the petitioner is pending for disposal before the Addl. District Judge, Patiala

House Courts, New Delhi, therefore, both the parties have stressed to decide the vital issue by this Tribunal. In view of the urgency, we have taken up the matter on urgent basis. It is not denied by the parties that even otherwise, the civil court would decide the matter as per its merit.

13. As far as the merit of the suit is concerned, we are not expressing any opinion about the merit of the case of respondent no. 1 who is claiming the user of the trade mark 'MAHESH' since 5.8.2000. We are only inclined to decide the legal issues involved in the above said matter.

14. As per facts mentioned above, we now proceed to discuss the legal issues involved in the matter.

15. Advertisement of application - (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

'Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of section 9 and sub-sections (1) and (2) of section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.

(2) Where -

(a) an application has been advertised before acceptance under Sub-section (1); or

(b) after advertisement of an application,-

(i) an error in the application has been corrected; or

(ii) the application has been permitted to be amended under Section 22.

The Registrar may in his discretion cause the application to be advertised again or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.'

16. The advertisement of a trademark includes the following details-

1. Class

2. application number

3. date of filing

4. name or names of all the applicant(s)

5. reproduction of the actual mark as applied for

6. goods/services in respect of which registration is sought
7. conditions/limitations subject to which the application is accepted or proposed to be accepted.
8. application numbers or trademark numbers with which the mark is to be associated.
9. name of the appropriate office where the application was filed and where all future proceedings will be conducted.

17. Sub-section (2) provides that where an application has been advertised and any error in the application has been corrected or the application has been permitted to be amended, the Registrar has a discretion to order the re-advertisement of the application; alternatively, instead of re-advertisement, he may cause the correction or amendment in the application to be notified in the Journal.

18. Publication on internet (Rule 43(3))

The new law enables the Registrar to publish the Trade-marks Journal on the Internet or any other electronic media. Any mark advertised in the journal so put on the Internet after the date of publication of the Trade-marks Journal in paper form, shall be treated as advertisement of the application for registration of a trademark under sub-section(1) of Section 20. However, the date indicated in the appropriate Journal number will be regarded as the date of publication for any purpose, and in particular for the purpose of computing the period for filing notice of opposition under Section 21.

The rule also enables the Registrar to make available issues of Trade-marks Journal compilation in CD-ROM or on the Internet or any other electronic media on payment of such fees as may be specified in the Journal.

19. As per facts in the above matter, it is admitted position that though the mark was applied for namkeen and sweets, but the description of goods mentioned in the Trade Mark Journal were 'Madhuram Sweet' instead of 'Namkeens and sweets'. Even in the certificate issued at the first instant was for 'Madhuram Sweet' and fresh certificate was issued on 24.04.2018 for namkeen and sweet after correction on 24.4.2018.

20. The main purpose of an advertisement in the Trade Marks journal is to provide complete information in respect of the trade mark advertised, so that the public at large may receive a clear information in respect of the trade mark. If however an advertisement gives incomplete information in respect of the particulars of the trade mark advertised or gives an incorrect information regarding any material particular, a prospective opponent is deprived of the opportunity of getting full information regarding the trade mark and also is deprived of the opportunity of filing an effective opposition.

21. On the face of such advertisement, it is clear to us that it was defective

advertisement. No opposition was filed by the petitioner.

22. It is settled law that an incorrect advertisement which amounted to misrepresentation is required to be cancelled.

In *Virendra Sethi v. Kundas Das*, the High Court observed that "it is the duty and responsibility of the concerned authorities under the Trade & Merchandise Marks Act to ensure that the advertisement is published properly and nothing is left vague or uncertain. A copy of the journal No. 1203 dated 21st July 2001 has been produced and a perusal of the same, the Court is of the view that the word "PRIKAS" is not readily and properly visible and discernible in the said advertisement. This being the position this Court is of the view that the petitioner was within the right to seek amendment of his opposition and the Registrar ought to have allowed the prayer of the petitioner for the amendment of the opposition by incorporating the word "PRIKAS" and consequential amendments as well."

23. No doubt, it is not in dispute that under sub-section (2) of section 20 gives discretionary power to Registrar either to notify or re-advertise the correction or amendment in the application where an error in the application has been corrected or the application has been permitted to be amended under Section 22, after advertisement.

Any amendment which affects the representation of the trade mark, or the goods/services covered by the application would in general be re-advertised, as such amendments are likely to affect third parties' rights. On the other hand correction of obvious mistakes or errors, after advertisement will be merely notified.

Where there is a re-advertisement of an application, the provisions of section 21 will apply. In the case of notification of corrections, however, section 21 has no application.

24. In the present neither the Registrar or the respondent no. 1 come to the notice of an error after the first registration is granted. Rule 41 of Trade Marks Rules - 2002 is also necessary to refer. The same are reproduced hereunder:-

"41. Correction and amendment of application. - An application for registration of a trade mark may, whether before or after acceptance of his application but before the registration of the mark, apply in Form TM-16 accompanied by the prescribed fee for the correction of any error in or in connection with his application or any amendment of his application:

Provided however, no such amendment shall be permitted which shall have the effect of substantially altering the trade mark applied for or substitute a new specification of goods or services not included in the application as filed."

25. The situation in present case is different, it may be possible that, before issuance of registration certificate, it did not come to notice of respondent no. 2,

otherwise Section 22 and Rule 41 could have been invoked. Rather, the dispute has arisen after the registration is issued and once the civil litigation was started pending between the parties.

26. 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 register 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) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, and after notice to the registered proprietor, correct any error, or enter any change, in the name, address or description of the registered user.

27. It is true that under sub-clause (1) empowers the Registrar to correct the Register in respect of the errors relating to the particulars of the registered proprietor or entries relating to the registered trade mark and also to make consequential amendments, and alterations in the certificate of registration. Sub-clause (2) empowers the Registrar to rectify the Register to correct any error or change of name, etc., on an application by the registered user after giving notice to the registered proprietor. If the correction is not vital and does not effect the right of anyone, it can be corrected without notice, but if it is substantial in nature where aggrieved party is involved, then notice is compulsory.

28. Section 58 provides for "correction of the register", on an application made by the registered proprietor. The nature of corrections envisaged are-

(a) 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) any error in the name, address or description of the person who is registered as proprietor.

(c) cancellation of the entry of a trade mark;

(d) striking out of any goods or classes of goods or services in respect of which

the mark is registered.

29. Procedure when the application is pending i.e. before issuance of registration certificate is to file the application on Form TM-16 for request for correction of error or amendment.

30. Once the mark is registered, the procedure to file following application as per circumstance would arise:

(a) Form TM-33 for request to enter change of name of description of registered proprietor or registered user of trade mark upon the register.

(b) Form TM-34 request for alteration of the address of principal place of business or of residence in India or of the address in the home country abroad in the register.

(c) Form TM-35 for application by registered proprietor for cancellation of entry thereof in the register.

(d) Form TM-36 for application by registered proprietor to strike out goods or services of registered mark.

(e) Form TM-50 request by registered proprietor or registered user who has no principal place of business in India to enter, alter or substitute an address for service in India as part of his registration.

31. Where an application is made under section 58, the Registrar may require the applicant to furnish such evidence by affidavit or otherwise as he may think fit as to the circumstances in which the application is made. Copy of the application is required to be served on the registered user(s), if any, and to any other person who appears from the register to have an interest in the trade mark.

32. After allowing the request, the Registrar may make any consequential amendment or alteration in the certificate of registration and accordingly, he may require the certificate of registration to be produced to him for the purpose.

33. No doubt an order of the Registrar under this section is obviously discretionary and the exercise of the power is subject to the provisions of section 128, which mandates that no discretionary power shall be adversely exercised without giving to the person an opportunity of being heard.

34. There cannot be any dispute if a request on Form TM-36 may be made by the registered proprietor of a trade mark to strike out goods or services from those for which the mark is registered. Where a trade mark is registered for a wide specification of goods or services and the mark is being used only in respect some of such goods/services, the registered proprietor may take proceedings under clause (d) to strike out other goods or services or classes of goods or services covered by the registration, especially in a case where the mark is threatened to be removed on the ground of non-use under section 47.

35. However, adding of goods in the certificate of registration, no power or

discretion is given to Registrar of Trade Marks to correct the registration certificate in view of section 58(1)(d) of the Act. Only under those circumstances, the fresh application for registration is required or to hear the registered proprietor and aggrieved party whose valuable rights are involved. Such discretion cannot be exercised which may effect the right of third party. Than issuance of proper notice is necessary.

36. In the present case, it is true that the respondent no. 1 applied for registration for Namkeens and sweets but the mark was incorrectly advertised as 'Madhuram Sweets' at the time of correction of registration certificate. The petitioner suit for infringement of Trade Mark against the respondent no. 1 was already pending.

37. However, the respondent no. 2 had chosen not to issue any notice to the petitioner whose rights are affected by virtue of adding the description of additional goods 'namkeens'. The registration certificate was altered with notice and hearing. Such discretion was an arbitrary and could not have been exercised. Thus, the certificate (corrected one dated 24 April, 2018) is cancelled. It is not a minor correction as the disputes between the parties for the same subject matter of goods is sub-judice and was pending in CIVIL court when the correction was made and fresh certificate was issued.

38. There is no dispute that when the goods namkeen was incorporated in the original certificate on 24th April, 2018, no notice was served upon the petitioner whose suit for infringement against the respondent no. 1 was already pending where the valuable rights are claimed by the petitioner before the civil court. The error which has occurred in the matter is not a minor error but is a substantial one. Under section 57(4) which mandates that the tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2). However, despite of the mandatory provision, notice was not issued. We do not agree with the arguments of the respondent no. 1 that no notice was required and it was merely clerical error made by the staff. As already held that it is a case of deletion of goods, the notice is not required. However, in the present case, the issue was for adding of goods i.e. 'Namkeen' where the rights have claimed by the petitioner. We do not believe that the respondent no. 1 for the last seven years was not aware that the registration certificate did not contain the description of goods 'namkeen' and when it came to know, only then representation was filed.

39. Similarly, the letter issued by the respondent no. 2 on 7th May, 2018 without the notice given to the respondent no. 1 for deletion, the correction carried out on 24th April, 2018 is also bad in view of the Judgment dated 26.10.1998 of the Supreme Court in the case of M/s. Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, the relevant para read as under:-

"Learned counsel for the appellant has contended that since suo motu action

under section 56(4) could be taken only by the High Court and not by the Registrar, contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of fornicies whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the filed."

40. The counsel for the respondent has also pointed out that on 23rd January, 2018, the petitioner rectification application for cancellation of the trade mark is already pending. However, since the Interim Order granted by the court was modified on 27.3.2018, the petitioner has filed the fresh application. Before the competent jurisdiction once the proceeding for the same mark of infringement are already providing. There is no much force in the submission of the learned counsel because once the civil proceedings are pending before the court, then the rectification is to be filed before the appellant court. It is also a matter of fact that the 1st original certificate was issued to respondent no. 1, however till 10th April, 2008, it was not pointed out by the respondent no. 1 to the respondent no. 2 about the said error. It was only on 10th April, 2008 the respondent through his letter had made a request before the respondent no. 2 for the correction of the description of goods by alleging that the mistake has been occurred from the office of Trade Mark Registry.

41. We are of the view that respondent no. 1 ought to have been pointed out such correction at the earliest, however, it was not done so for about 7 years. Similarly, once the rectification is filed by the petitioner before us by mentioning the matter on 7th May, 2018, the letter of correction of 2nd certificate ought not to have been issued.

42. From the entire gambit of the matter, we are of the view that the correction made in the certificate on 24th April, 2018 is contrary to section 57 and 58 of the Trade Marks Act. In case the correction was to be made, the notice to the aggrieved party must have been issued because of the reason that the parties were already in litigation before the court where the petitioner was claiming its right for the same trade mark. Such notice has not been issued, therefore, the correction dated 24th April, 2018 was bad. Even the issuance of letter dated 7th May, 2018 by the respondent no. 2 in the name of the petitioner for deletion of the correction dated 24th April, 2018 is also contrary to provisions of section 57(4) of the Act as no notice was issued to the respondent no. 1. Both the directions dated 24th April, 2018 and 7th May, 2018 for said correction are set-aside.

43. We are of the considered view that in case any correction is made to the registration, the mark ought to have been re-advertised in the Trade Mark Journal for the purpose of opposition by any party, including the petitioner. Under these circumstances, both registration certificate issued in favour of the

respondent no. 1 are recalled cancelled.

44. The Trade Mark no. 1698451 of 12th June, 2008 shall be re-advertised in the Trade Mark Journal after correction of description of goods i.e. Namkeen and sweets as per rules for the purpose of opposition, if any, to be filled by the party as per the provision of the act.

45. Further proceedings of this application will be decided as per the provision of Act. The present rectification is accordingly disposed of. The earlier petition filed for cancellation of the same trade mark before the respondent no. 2 is also infructuous.

46. We may clarify here that our finding are only in relation to the trade mark application no. 1698451 only. The finding arrived by us shall have no bearing in the civil proceeding pending between the parties. As far as 18 years user of trade mark is concerned, as claimed by the respondent no. 1, the same is to be considered by the Hon'ble Civil Court as per its own merit. The appeal and pending application in the subject matter are accordingly disposed of.