



2024:DHC:9048



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

% **Date of Decision: 20th November, 2024**

+ C.O. (COMM.IPD-TM) 396/2022

M/S M.H. ONE TV NETWORK PVT. LTD.Petitioner

Through: Mr. Rishah Srivastava, Ms.
Yasheswini Sharma and Mr. Sahil
Gupta,, Advocates
Mob: 9958349040

versus

M/S MH 7 NEWS AND ANR.Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. Respondent no. 1 has been served by way of publication in the newspaper 'Times of India' dated 14th September, 2024.
2. None appears for respondent no. 1, despite service of notice.
3. Accordingly, respondent no. 1, is proceeded *ex-parte*.
4. The matter is taken up for hearing.
5. The facts, as canvassed in the petition, are as follows:
 - 5.1 The petitioner has been engaged in the business of providing various goods and services, including, Broadcasting (Cable Television), Broadcasting (Radio), Broadcasting (Television), included in Classes-09, 16, 38 and 41 of the Trade Marks Act, 1999.
 - 5.2 Since the year 2003-2006, the petitioner through his predecessors, has



2024:DHC:9048



been using the trademarks "MH ONE", "PRIME" and "MH ONE" word *per se*, as well as in label form, for marketing and providing their services.

5.3 The petitioner is the lawful owner and proprietor of the trademarks



and "MH ONE" as well as, the label form.

5.4 MH ONE TV Network Limited, presently, MH ONE TV Network Private Limited, was founded in the year 2003. However, the petitioner has been using the trademark in question in respect of various goods and services, since the year 2002. Further, the first channel of the petitioner was launched in May 2003 under the brand name *MH ONE*, which is a 24 hours Punjabi Music Channel, after taking due permission from the competent authority of the Government of India. Today, the channel of the petitioner has become the leading Punjabi Language Music and Entertainment Channel, with an average weekly market share of 65%, which has increased from 17.87% since the time of its launch.

5.5 The year 2007 was a landmark year for *MH ONE* channel, with the launch of two additional channels, i.e., *MH ONE SHRADDHA*, the devotional channel and *MH ONE NEWS*, a 24 hours news channel with a focus on the Hindi speaking belt. With the vast experience of running a bouquet of three channels from different genres, the petitioner is well positioned to capture considerable growth opportunities in India's Punjabi Music, Hindi devotional and News broadcasting industry.




5.6 Apart from the electronic media, the petitioner has their presence in digital media, as well as on YouTube and earning handsome revenue from the said platforms.

5.7 The petitioner started live airing of morning and evening Aarti of Maa Vaishno Devi from Katra, Jammu & Kashmir, on account of which the name *MH ONE* has become household name.



5.8 The petitioner is the registered proprietor of the following various trademarks/service marks, which are still valid and subsisting;

| Trade Mark No. | Class | Trademark | Date of User | Registration valid upto Certificate issued on |
|----------------|------------------------|-----------------------------------------------------------------------------------------------|--------------|-----------------------------------------------|
| 1493768 | 41 |  MH ONE | 06/05/2003 | 05.10.2026 23.03.2010 |
| Goods | ENTERTAINMENT SERVICES | | | |
| 1491461 | 41 |  MH ONE | 01/01/2006 | 27/09/2026 09/12/2014 |
| Goods | ENTERTAINMENT SERVICES | | | |
| 1753622 | 38 |  mh | 06/05/2003 | 14/11/2028 22/05/2015 |
| Goods | ENTERTAINMENT SERVICES | | | |
| 1605278 | 9 |  mh | 06/05/2003 | 25/09/2027 01/03/2012 |



| | | | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------|---------------------------------------------------|
| Goods | CAMERAS (PHOTOGRAPHY), CARTOONS, (ANIMATED), CINEMATOGRAPHIC CAMERA, CINEMATOGRAPHIC FILM (EXPOSED), CINEMATOGRAPHIC FILM (APPARATUS FOR EDITING), COMPACT DISCS (AUDIO-VIDEO), COMPACT DISCS (READY-ONLY MEMORY), COMPUTER PROGRAMMERS (PROGRAMS) RECORDED, COMPUTER SOFTWARE (RECORDED), COMPUTER, DATA MEDIA (MAGNETIC), DATA MEDIA (OPTICAL), DATA PROCESSING APPARATUS, DISCS (OPTICAL), DISKS (MAGNETIC), HEAD CLEANING TAPES (RECORDING), MAGNETIC DATA MEDIA, MAGNETIC TAPE UNIT (FOR COMPUTERS), MODEMS, PROJECTION APPARATUS, PROJECTION SCREENS RADIOS, RECORD PLAYER NEEDLES APPARATUS FOR CHARGING RECORD PLAYERS, SOUND RECORDING STRIPS, SOUND REPRODUCTION APPARATUS, SOUND TRANSMITTING APPARATUS, TAPE RECORDERS, TAPE UNITS (MAGNETIC), FOR COMPUTER, TELEVISION APPARATUS, VIDEO TAPES, | | | |
| 1162566 | 9 | M.H. ONE TV NETWORK PVT. LTD. | 01/12/2002 | Accepted/Advertiser Published on 16/04/2006 |
| Goods | PHOTOGRAPHIC CINEMATOGRAPHIC, TAPE RECORDERS, PHONOGRAPHS RECORDS, CASSETTES, LIGHT SIGNALS INSTRUMENTS, MAGNETIC TAPES, FLEXIBLE DISCS FOR RECORDING OR BEARING MAGNETICALLY RECORDED DATE, SOUND SYSTEMS, MICROPHONES AND PARTS THEREOF, VIDEO RECORDING AND REPRODUCING APPARATUS AND INSTRUMENTS, DEVICES FOR VIEWING STILL PICTURES ON THE TELEVISION SCREEN, RECORD CHANGERS AND RECORD PLAYERS, COMPACT DISC (AUDIO- VIDEO), JUKE BOXES(MUSICAL), PROJECTION SCREENS, RECORD PLAYERS, SOUND LOCATING INSTRUMENTS, SOUND RECORDING APPARATUS, SOUND RECORDING CARRIERS, SOUND RECORDING STRIPS SPEAKING TUBES TAPE RECORDERS, VIDEO TAPES, | | | |
| 1162567 | 16 |  | 01/12/2002 | 30/12/2032 30.12.2024 |
| Goods | PRINTED MATTERS RELATED TO RADIO, TELEVISION AND BROADCASTING SERVICES, TELEVISION AND RADIO SCHEDULES, POSTERS AND ALL PUBLICITY MATERIALS, BILL BOARDS, SHEET MUSIC, PHOTOGRAPHIC ALBUMS, PHOTOGRAPHIC PRINTS, PHOTOGRAPHIC PROOFS (PRINTS), | | | |



| | | | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|------------|--------------------------|
| | PHOTOGRAPHS, VISITING CARDS, LETTER HEADS, ADVERTISING MATERIALS, BROACHURES AND PRINTED MATTERS RELATED TO EVENT MANAGEMENT AND PRODUCTION, SONG BOOKS, ALL KIND OF PRINTED MATTER PAPER AND PAPER & nbsp; ARTICLES, NEWSPAPERS AND PERIODICALS BOOKS BINDING MATERIALS STATIONERY, PORTRAITS, DIARIES, WRAPPING & PACKAGING, ALBUMS FILE FOLDERS , FRAMES & ADVERTISING, NOVELTIES, GRAPHIC PRINTS, GRAPHIC REPRODUCTIONS, PHOTOGRAPH STANDS, PHOTOGRAPHS (APPARATUS FOR MOUNTING-) ICUTRES, CALENDARS, COMPUTERS PROGRAMMES (PAPER TAPES AND CARDS FOR THE RECORDAL OF -) ENVELOPES (STATIONERY) FILM (*PLASTIC CLING-) EXTENSIBLE FOR PALLETIZATION, GRAPHIC REPRESENTATIONS, MAGAZINES (PERIODICALS) MANULAS (HAND | | | |
| 3612799 | 38 |  | 06/05/2003 | 14/08/2027 05/02/2018 |
| Goods | TELEVISION BROADCASTING AND TELECOMMUNICATIONS SERVICES; NEWS; T.V SHOWS AND PROGRAMS; AUDIO AND VISUAL TRANSMISSION; SATELLITE TRANSMISSION SERVICES. | | | |
| 3815131 | 35 |  | 09/05/2003 | 24/04/2028 19/10/2018 |
| Goods | MEDIA BUYING SERVICES, ADVERTISING AGENCIES, ADVERTISING BY MAIL ORDER; DISSEMINATION OF ADVERTISING MATTER, RENTAL/SELLING OF ADVERTISING SPACE/TIME; COMMERCIAL INFORMATION & ADVICE FOR CONSUMERS; DOCUMENT REPRODUCTION; ECONOMIC FORECASTING; ORGANIZATION OF EXHIBITIONS/FASHION SHOWS/MODELLING FOR COMMERCIAL/ADVERTISING/PROMOTIONAL PURPOSES; MARKETING; MARKETING STUDIES/RESEARCH; NEWS CLIPPING SERVICES; OPINION POLLING; OUTDOOR ADVERTISING; PRODUCTION OF ADVERTISING FILMS; PUBLICITY; PUBLICITY AGENCIES; ONLINE/RADIO/TELEVISION ADVERTISING/COMMERCIALS | | | |

5.9 The petitioner’s *MH ONE/MH1* channels, reach in the states of Delhi, Punjab, Himachal Pradesh, Haryana, Jammu & Kashmir, UP and Uttaranchal and new areas are being added to this on a regular basis. The channel of the petitioner also has high viewership across the border in various countries including Bangladesh, Nepal, UAE, Middle East and other neighboring countries. The channels of the petitioner are also available on the Direct to Home (“DTH”) platform of Tata Sky, Dish Network, Videocon, Airtel and Big TV and other operators of this field.



5.10 The petitioner has been continuously and uninterruptedly using the invented mark *MHI/MH-ONE* since the year 2002. Thus, by virtue of long and continuous user, a valuable goodwill and reputation has accrued to the said mark “*MHI*”.

5.11 The respondents are engaged in the same/similar/allied/cognate business as that of the petitioner’s goods and business, i.e., “*Media Buying Services*”.

5.12 A civil suit being *CS DJ 356/2021*, has been filed by the petitioner against the respondent no. 1 herein, on account of using similar trademark, as that of the petitioner, which is pending adjudication before the District Court, Rohini.

5.13 The respondents have adopted a deceptively similar mark, i.e., *MH7*, for its services. The said trademark in relation to the similar services, would deceive and cause confusion *vis-à-vis* the respondents’ trademarks in normal course of business activities, as the services in question, are same/allied/cognate, and also due to the deceptive similarity with the mark of the petitioner.

5.14 Thus, the present petition has been filed, seeking cancellation of the registered trademark of the respondents.

6. The respondent no. 1 has been proceeded *ex-parte*, as none has appeared for the respondent no. 1, despite service.

7. Learned counsel appearing for the petitioner has drawn the attention of this Court to the various documents to show the user of the petitioner, since long.

8. Attention of this Court has been drawn to the document showing the turnover of the petitioner, to demonstrate that the petitioner’s services under



the mark in question, is widely known.

9. Attention of this Court has also been drawn to the various advertisement and endorsement by various celebrities, to show that the mark of the petitioner is well established and the public in general identifies the said mark as that of the petitioner.

10. Having heard learned counsel appearing for the petitioner, this Court at the outset notes the registration of the mark 'MHI' in favour of the petitioner dated 14th November, 2008, which is reproduced as under:

प्रकृत्य नं० - 2
FORM O-2

भारत सरकार
GOVERNMENT OF INDIA
व्यापार चिन्ह रजिस्ट्री
TRADE MARKS REGISTRY
व्यापार चिन्ह अधिनियम, 1999
Trade Marks Act, 1999

क्रमांक No. 1211230

व्यापार चिन्ह के रजिस्ट्रीकरण का प्रमाणपत्र, धारा 23 (2) नियम 62 (1)
Certificate of Registration of Trade Mark, Section 23 (2), Rule 62 (1)

व्यापार चिन्ह संख्या / Trade Mark No. 1753622 दिनांक/ Date 14/11/2008 ज.संख्या/ J.No. 1658

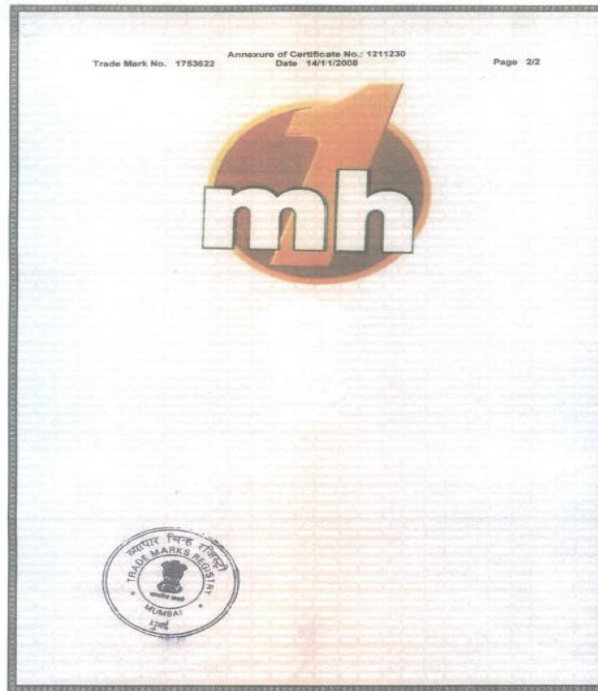
यह प्रमाणित किया जाता है कि गिराव प्रकार चिन्ह की सनाकृति इसके साथ संलग्न है, यह के बारे में विनांक नाम से रजिस्ट्रीकृत हो चुका है।
Certified that the Trade Mark / a representation is annexed hereto, has been registered in the name(s) of M.H. ONE TV NETWORK LTD., 2, SSI INDUSTRIAL AREA G T KARNAL ROAD DELHI-110033, SERVICES, (Body Incorporate)

In Class 38 Under No. 1753622 as of the Date 14 November 2008 In respect of BROADCASTING (CABLE TELEVISION), BROADCASTING (RADIO), BROADCASTING (TELEVISION), COMPUTER AIDED TRANSMISSION OF IMAGES & MESSAGE, NEWS AGENCIES

मेरे निदेश पर आज के मास के से दिन को इस पर मुद्रा लगायी गई।
Sealed at my direction, this 22nd day of May, 2015

व्यापार चिन्ह रजिस्ट्री, DELHI व्यापार चिन्ह रजिस्ट्रार, Registrar of Trade Marks

रजिस्ट्रीकरण अर्पण की तिथि से 10 वर्ष के लिए है और अनुदान यह 10 वर्ष की अवधि के लिए और प्रत्येक 10 वर्ष की अवधि के अन्तर्गत नवीनीकरण किया जा सकता है।
Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of each period of 10 years.
यह प्रमाणपत्र किसी कानूनी प्रकृति के प्रयोग के लिये या विवाद में रजिस्ट्रीकरण अधिकार बनाने के लिये नहीं है।
This certificate is not for use in legal proceedings or for obtaining Registration abroad.
टिप्पणी - इस व्यापार चिन्ह के स्वामित्व में कोई परिवर्तन होने पर, या कार्यालय के मुख्य स्थान के बारे में या धारा 23 के अधिनियम के अन्तर्गत होने पर परिवर्तन के लिये आवेदन पत्र जमा करने चाहिये।
Note: Upon any change of ownership of this Trade Mark, or change in address, of the principal place of business or address for service in India a request should be made to register the change.



11. This Court further notes the certificate of registration of trademark in favour of the petitioner dated 5th October, 2006, for the mark 'MH ONE', which is reproduced as under:



12. Per contra, with respect to the mark of the respondent, the application




2024:DHC:9048



was filed only on 4th April, 2017. The certificate of the respondent is reproduced as under:

प्रारूप आरजी - 2
Form RG - 2


भारत सरकार
Government of India
व्यापार चिन्ह रजिस्ट्री
Trade Marks Registry
व्यापार चिन्ह अधिनियम, 1999
Trade Marks Act, 1999

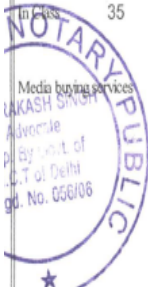

INTELLECTUAL
PROPERTY INDIA
Patents / Designs / Trademarks
Geographical Indications

क्रमांक
No. 1679967

व्यापार चिन्ह संख्या / Trade Mark No. 3521319 दिनांक /Date 04/04/2017 ज. संख्या /J. No. 1799

यह प्रमाणित किया जाता है कि जिस प्रकार चिन्ह की समकृति इसके साथ संलग्न है, वह नाम से रजिस्ट्रीकृत हो चुका है।
के बारे में दिनांक
Certified that Trade Mark / a representation is annexed hereto, has been registered in the name(s) of:-
PAWAN BHAN PROPRIETOR OF MH7NEWS, E2, Sector: 63, Noida U.P. 201301, Sole Proprietor, (Single Firm)


In Class 35 Under No. 3521319 as of the date 04 April 2017 in respect of


Media buying services
AKASH SINGH
Advocate
Bar Council of
D.T. of Delhi
Regd. No. 656/06

Trade Mark as annexed

के दिनांक पर आज के मास के वे दिन को इस पर मुद्रा लगायी गईं

Sealed at my direction, this 21st day of October, 2017


व्यापार चिन्ह रजिस्ट्री
Trade Marks Registry MUMBAI


व्यापार चिन्ह रजिस्ट्रार
Registrar of Trademarks

रजिस्ट्रेशन अवधि की शुरुआत से 10 वर्ष के लिए है और नवोपचारण 10 वर्ष की अवधि के लिए और उसके 10 वर्ष की अवधि के अंतर्गत पर भी नवीनीकृत किया जा सकता।
Registration is for 10 years from the date of application and may then be renewed for a period of 10 years and also at the expiration of each period of 10 years.
यह प्रमाणपत्र विधि कार्यवाही में इस्तेमाल के लिए या निदेश में रजिस्ट्रेशन अधिष्ठापन करने के लिए नहीं है।
This certificate is not for use in legal proceedings or for obtaining Registration abroad.
टिप्पणी - इस व्यापार चिन्ह के स्वामित्व में कोई परिवर्तन होने पर, या कारोबार के मुख्य स्थान के पते में या भारत में कारोबार के लिए पते में परिवर्तन होने पर परिवर्तन के लिए अनुरोध तुरंत किया जाना चाहिए।
Note: Upon any change of ownership of this Trademark, or change in address, of the principal place of business or address for service in India a request should AT ONCE be made to register the change.



2024:DHC:9048



Trade Mark No. 3521319

Annexure of Certificate No.: 1679967
Date: 04/04/2017



Attested Photo Copy
Notary Public
01 MAY 2018

13. Considering the aforesaid, it is manifest that the registration/user of the petitioner's mark, is much prior to that of the respondent.

14. A side by side comparison of the mark of the petitioner and the respondent, is given as under:

| <i>Petitioner Marks</i> | <i>Respondent Marks</i> |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
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2024:DHC:9048



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15. Perusal of the aforesaid marks makes it evident, that the mark adopted by the respondents, is deceptively similar to the mark of the petitioner. Further, this Court notes that the services provided by both parties are of similar nature, i.e., transmission of various entertainment programs. Further, the target consumer is also similar, i.e., watching the Entertainment and News Channel. Thus, the Triple Identity Test, i.e., similar mark, similar services for which the mark has been registered and similar consumers, is satisfied.

16. This Court notes that the trademark of the respondent being similar to the petitioner's trademark, there is high possibility of users with ordinary average intelligence, being led to consider that the services of the respondent are those of the petitioner. The petitioner has been using its mark since long. The respondents have adopted similar mark many years later, clearly in order to encash the goodwill of the petitioner. The impugned trademark in



relation to similar services would deceive and cause confusion.

17. This Court in the case of *Greaves Cotton Limited Versus Mohammad Rafi and Ors.*, 2011 SCC OnLine Del 2596, has held as follows:

“xxx xxx xxx

16. It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the plaintiff. When the mark of the defendant is not identical to the mark of the plaintiff, it would be necessary for the plaintiff to establish that the mark being used by the defendant resembles his mark to such an extent that it is likely to deceive or cause confusion and that the user of the impugned trademark is in relation to the goods in respect of which the plaintiff has obtained registration in his favour. **It will be sufficient if the plaintiff is able to show that the trademark adopted by the defendant resembles its trademark in a substantial degree, on account of extensive use of the main features found in his trademark. In fact, any intelligent person, seeking to encash upon the goodwill and reputation of a well-established trademark, would make some minor changes here and there so as to claim in the event of a suit or other proceeding, being initiated against him that the trademark being used by him, does not constitute infringement of the trademark, ownership of which vests in some other person. But, such rather minor variations or distinguishing features would not deprive the plaintiff of injunction in case resemblance in the two trademarks is found to be substantial, to the extent that the impugned trademark is found to be similar to the registered trademark of the plaintiff.** But, such malpractices are not acceptable and such a use cannot be permitted since this is actuated by a dishonest intention to take pecuniary advantage of the goodwill and brand image which the registered mark enjoys, it is also likely to create at least initial confusion in the mind of a consumer with average intelligence and imperfect recollection. It may also result in giving an unfair advantage to the infringer by creating an initial interest in the customer, who on account of such deceptive use of the registered trademark may end up buying the product of the infringer, though after knowing, either on account of difference in packaging etc. or on account of use of prefixes or suffixes that the product which he is buying is not the product of the plaintiff, but is the product of the defendant.

xxx xxx xxx”

(Emphasis Supplied)

18. Thus, it is manifest that the competing marks, when compared



together, are deceptively similar.

19. Considering the position of the law, it is clear that the adoption and use of the trademark 'MH7' by the respondent in respect of the similar services, i.e., Entertainment and News Channel, is deceptively similar to the petitioner's registered trademark, i.e., *MHI*. The impugned registration is wrong and illegal, as there is no originality in the same. The impugned mark of the respondents has substantially been copied from the registered trademark of the petitioner. In that view of the matter, it is evident that the registration of the impugned mark is wrongly appearing on the register of trademarks and is liable to be removed.

20. In view of the aforesaid detailed discussion, the trademark of the defendant, i.e., 'MH7' bearing trademark registration no. 3521319 in Class 35, is hereby cancelled.

21. The Registrar of Trade Marks is directed to take necessary steps to rectify its register and issue appropriate notification, in that regard.

22. The Registry is directed to supply a copy of the present order to the Trade Marks Registry, at E-mail: llc-ipo@gov.in, for compliance.

23. The present petition accordingly stands disposed of, with the aforesaid directions.

MINI PUSHKARNA, J

NOVEMBER 20, 2024

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