

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.O. (COMM.IPD-TM) 334/2021**

DOLMA TSERING Petitioner
Through: **Mr. Soumil Karl Gonsalves, Adv.**

versus

MOHD. AKRAM KHAN AND ANR..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **06.03.2024**

1. This rectification petition has been filed seeking cancellation and removal of respondent No.1's trademark '**DOLMA AUNTY MOMOS**' registered with application no. 3794360 in Class 30 on 24th September, 2018 in application dated 02nd April, 2018 on a proposed to be used basis.
2. This petition was filed before the Intellectual Property Appellate Board ('**IPAB**') in 2021, however, post abolition of the IPAB, this petition has been transferred to this Court.
3. No one has appeared on behalf of respondent No.1 till date despite service including on 21st April, 2023. Respondent No.1 is, therefore, proceeded *ex-parte*.
4. In support of the rectification petition, it has been submitted that the petitioner Ms. Dolma Tsering is the proprietor of M/s Dolma Aunty Momos with its principal outlet at Central Market, Lajpat Nagar-1, New Delhi. It is

claimed that she has been engaged in the business of selling the Tibetan delicacy ‘*momos*’ and other like products since 1994, and as of 2021 ran five shops across Delhi-NCR. The petitioner owns registration in the trademark ‘**DOLMA AUNTY MOMOS**’ bearing no. 5415961 in Class 29 applied on 20th April, 2022 and granted on 17th November, 2023, user claimed from 01st January, 1994. Yet another application for registration of a trademark is pending under Class 43 with the application bearing status ‘*Accepted & Advertised*’.

5. The petitioner set up a small shop in 1994 at Lajpat Nagar and was the first retailer of said Tibetan delicacies which has since become popular all across Delhi-NCR. It became a popular street food since, and she gained massive renown and reputation in her food products. Photographs of the flagship shop at Lajpat Nagar is represented as under:





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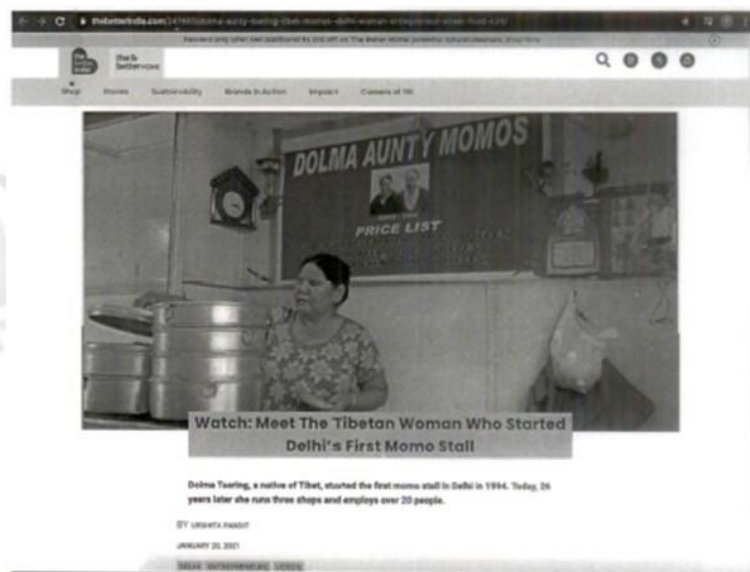
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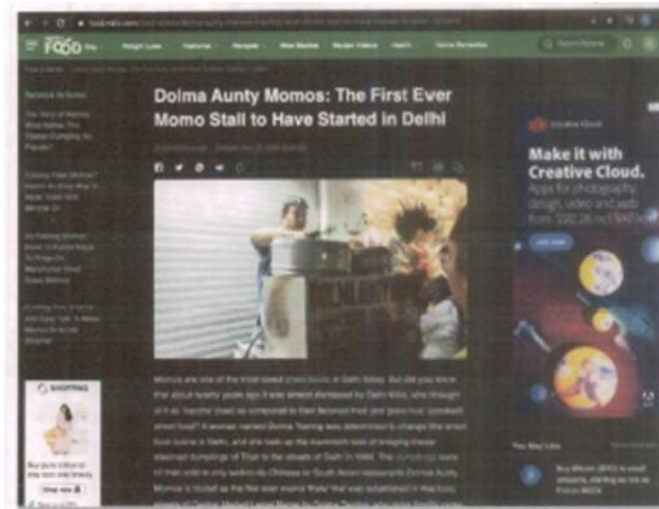
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6. The petitioner receives several accolades for the quality of goods and services. Some of them are noted as under:

Year	Particulars
2018	Dettol Delhi Street Food Awards In the category of 'Best Momo'
2019	Whats Hot Owl's Awards In association with Times Prime In the category of 'Best Momos, Delhi NCR'
2020	Whats Hot Owl's Awards

7. Her food products are available through various websites and food delivery platforms and screenshots of which are as under :





8. She had also obtained registration under the Food Safety and Standards

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Act, 2006 bearing registration no.23316008000697 on 01st August, 2016. Counsel for petitioner has also drawn attention to certain screenshots of newspaper articles highlighting quality and popularity of her goods and services, which are extracted as under:



9. Grievance of plaintiff is against respondent's trademark who has

adopted not only the prior used trademark of petitioner but also that the said trademark is identical and uses the name of petitioner herself as in 'DOLMA'. Considering that respondent No.1 has not appeared or responded to the said petition, allegations of non-use by petitioner stand unrebutted and, therefore, will have to be accepted. The petitioner has, therefore, claimed cancellation *inter alia* on the ground of Sections 11(1), 11(2), 11(3)(a) and 47 of the Trade Marks Act, 1999.

10. In view of the above facts and circumstances and having perused the documents placed on record as well as hearing submissions of counsel for petitioner, this Court is of the view that the trademark of respondent No.1 be cancelled and removed from the Trade Marks Register same should accordingly be rectified.

11. It is directed accordingly.

12. Respondent No.1's registered trade mark be removed and cancelled in the above terms.

13. The Register be rectified accordingly and the website of the Registrar of Trade Marks be updated within a period of four weeks.

14. Communication be sent through email to the Trade Marks Registry at llc-ipo@gov.in.

15. Petition is disposed of. Pending applications, if any, are rendered infructuous.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 6, 2024/MK/sc