

If the mark in the context of cosmetic and skincare products in Class 3, is descriptive of the nature, kind and intended purpose of the goods, is devoid of distinctive character, is not capable of distinguishing the goods of one person from those of another, and appears to be common to trade, it warrants rectification under Section 57(2) of the Trade Marks Act, 1999

The **Delhi High Court** in the case of **Honasa Consumer Ltd vs Visage Beauty and Health Care Pvt Ltd [C.O. (COMM.IPD-TM) 215/2023]** dated **June 19, 2026**, has held that the mark “D-TAN”, in the context of cosmetic and skincare products in Class 3, is descriptive of the nature, kind and intended purpose of the goods, is devoid of distinctive character, is not capable of distinguishing the goods of one person from those of another, and appears to be common to trade. Consequently, the mark could not have been validly registered and was wrongly remaining on the Register, warranting rectification under Section 57(2) of the Trade Marks Act, 1999.

The Court observed that the Trade Marks Registry had raised objections under Sections 9(1)(a) and 9(1)(b) of the Act on February 02, 2012, and that respondent no. 1’s reply dated September 30, 2014 did not satisfactorily answer the objection that the mark was devoid of distinctive character, nor did it provide any substantive explanation to overcome the objection that the mark consisted exclusively of indications designating kind, quality or intended purpose. The Court further observed that Section 12 operates as an exception permitting registration in cases of honest concurrent use or special circumstances, which itself implies the possibility of other users of identical or similar marks in respect of the same or similar goods or services.

The Court then examined the meanings of “de” and “tan” and held that, when combined in the context of skincare products in Class 3, “DETAN” or “D-TAN” clearly demonstrates removal or reversal of tanned skin and would undoubtedly imply a product which may bring about removal or reversal of tanning of the skin. On that basis, and also considering the screenshots of respondent no. 1’s own products and other manufacturers’ products, the Court held that “D-TAN” and “DETAN” are pure descriptors of the kind, quality and intended purpose of the products and fall strictly within Section 9(1)(b) of the Act.

The Court additionally found that the mark was not capable of distinguishing the goods of one person from those of another and appeared to be common to trade, and also observed that respondent no. 1 itself used “Professional O3+” prominently on its products and “D-TAN” in a small font, usually with prefixes such as “BLUEBERRY”, “CRANBERRY” and “OXY”, which impelled the Court to conclude that respondent no. 1 itself used “D-TAN” more in the nature of a description of the goods rather than as a trademark.

As regards acquired distinctiveness or secondary significance, the Court held that the Chartered Accountant certificates and sales figures only prima facie established commercial success, but did not establish that the mark “D-TAN” had been imprinted in the minds of the general public such that it denoted the goods of respondent no. 1 and respondent no. 1 alone. The Court further held that the petitioner fell within the meaning of “an aggrieved person” under Section 57 because the cease-and-desist notice dated April 14, 2023 sought to restrain

the petitioner from using "D-TAN/DETAN" on its products, and such restriction, once the mark was found descriptive, would be restrictive of the petitioner's lawful trade.