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

\+ C.A.(COMM.IPD-TM) 25/2021

A DOT LIMITED ..... Appellant

Through: Mr. Philip Abraham and Mr. Manish Kumar, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, Central Government Standing Counsel with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 11.04.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"] is directed against Refusal Order dated 06th December, 2018 read along with the Statement of Grounds of decision dated 17th January, 2019 [hereinafter separately "*Refusal Order*" and "*Statement of Grounds of decision*" and collectively "*Impugned Orders*"] whereby Appellant's Trade Mark Application No. 2822309 for registration of the trademark 'WHAT DO YOU SEE?' under Classes-16, 25, 26, 41 and

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45[1] [hereinafter "*subject mark*"], has been refused. Reasons disclosed in the Statement of Grounds of decision are culled out below:

> "*With reference to the above and request on Form TM-M dated 06/12/2018. It has been decided by the Registrar of Trade Marks to Inform you that hearing in respect of above application was held on 22/11/2018 and the said application is refused on the following Grounds;*
>
> *The applicant advocate SriRam appeared. I have heard the argument and also perused the documents available on record. Objection under section 9 is sustained, application is refused for registration.*
>
> ** 9 - Absolute grounds for refusal of registration.*
> ** 9(1)(a) - The trade mark is devoid of any distinctive character, that is to say, not capable of Distinguishing the goods or services of one person from those of another person:*
> *9(1)(b) - The Trade Mark consist exclusively of marks or indications which serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services.*
>
> *Since the objection raised in the Examination Report under section 9 of the Trade Marks Act, 1999 as mentioned above cannot be waived and Ld. Counsel failed to convince at the time of hearing in proving his/her case, the above mentioned application is refused.*"

2. It must be noted that although the Refusal Order cites Section 11 of the Act, however, the Statement of Grounds of decision contains no discussion thereon; in fact, no conflicting marks were cited in the Examination Report. Based on this perspective, the Court will restrict its analysis and review of the Impugned Orders on Section 9(1)(*a*) and (*b*) of the Act.

3. The Impugned Orders do not give any reasoning to support the conclusion that the subject mark is devoid of distinctiveness or is descriptive in nature. As can be easily noticed, the subject mark 'WHAT DO YOU

[1] Multi-class application under Class-99.

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SEE?' is combination of English dictionary words forming a tagline/ slogan. Such combination of words can function as a source identifier as long as the expression does not describe or relate to the features of the products and services. The intended use of the subject mark is for goods and services falling under Classes-16, 25, 26, 41, and 45, with no direct or indirect reference to the mark itself. The question 'WHAT DO YOU SEE?' is often used to elicit an individual's perception or interpretation of a given situation or object, serving as a prompt for them to share their thoughts, opinions, or observations. It, therefore, does not designate the time, quality/ quantity or intended purpose of any other characteristics of the goods and services falling in the afore-noted classes.

4. This Court in order dated 16th January, 2023 in C.A.(COMM.IPD-TM) 34/2022), has already observed that slogans or taglines are treated like word marks while processing a Trade Mark Application for registration.

5. The Senior Examiner seems to have overlooked the afore-mentioned aspects and may have relied solely on the dictionary definition of the words that form the subject mark, while passing the Impugned Orders.

6. The Appellant has obtained registration for the identical mark in several jurisdictions, including but not limited to, the United States of America, the United Kingdom, and Israel. In India, a device mark which includes the subject mark as a tagline,[2] has also been granted registration: -

[2] Vide Trade Mark Application No. 2822308.

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WHAT DO YOU SEE?

7. In view of the above, the Impugned Orders cannot sustain and accordingly, the present appeal is allowed with the following directions:

(i) Impugned Orders are set aside.

(ii) Trade Marks Registry is directed to process the Trade Mark Application for the subject mark.

(iii) Subject mark be advertised within a period of three months from today.

(iv) If there is any opposition, the same shall be decided on its own merits, uninfluenced by observations made hereinabove.

(v) The rights in subject mark shall be restricted to combination of words 'WHAT DO YOU SEE?', as depicted above.

(vi) It is clarified the subject mark shall not grant any exclusive rights in the words 'WHAT' 'DO' 'YOU' 'SEE?', separately or individually. This disclaimer/ condition and limitation shall be reflected in the Trade Marks

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Journal at the time of advertisement if the subject mark ultimately proceeds for registration.

8. With the above directions, the appeal is disposed of.

9. Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

APRIL 11, 2023
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