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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **19.11.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA (TM) No.7 of 2024

MONSTER ENERGY COMPANY,
1 Monster Way, Corona,
California 92879,
USA,
Through Power Agent:
Raghavan Ravindran Nair,
S/o.Mr.P.Raghavan, aged 71 years,
working at De Penning & De Penning
120, Velachery Main Road,
Guindy, Chennai - 600 032. ... Appellant

-vs-

The Registrar of Trade Marks,
Trade Marks Registry,
Intellectual Property Rights Building,
G.S.T.Road, Guindy,
Chennai - 600 032. .. Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 to set aside the impugned order dated 19.02.2024 on the file of the respondent and consequently, direct the respondent to permit the petitioner's trade mark application No.5074875 to proceed to advertisement in the Trademarks journal.

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For appellant : Mr. Dwarakesh Prabhakaran

For respondent : Mrs. A. Anuradha,
CGSC

JUDGMENT

This appeal has been filed, challenging the order dated 19.02.2024 passed by the respondent, refusing to register the appellant's Trade Mark "ENERGY FOR THE JOURNEY" under Section 9 (1) (A) of the Trade Marks Act on the ground that the said Trade Mark is devoid of any distinctive character. Under the impugned order, the Trade Mark registry has refused to register the Trade Mark of the appellant "ENERGY FOR THE JOURNEY" on the ground that the said trade mark is inherently incapable of distinguishing the goods of one person from those of another person.

2. According to the respondent, the words used by the appellant are too common to be monopolized by any individual and the applied Trade Mark are generic words used by many other people.

3. The learned counsel for the appellant drew the attention of this Court to the various registrations obtained by the appellant as well as the

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pending registration pertaining to the appellant's Trade Mark. However, as seen from the same, which is listed out in ground No (I) of the grounds of appeal, which is extracted hereunder, none of those registration pertains to a similar mark as was applied by the appellant, which has got rejected under the impugned order:

Mark	Class	Application Number	Current Status
ENERGY FOR THE ADVENTURE LIVE+	32	4085863	Pending
ENERGY JUICE	32	3988617	Registered
MUTANT ENERGY	32	3925300	Registered
PHYTO ENERGY	32	4576391	Registered
PREDATOR DOUBLE THE ENERGY	32	4268202	Registered
PREDATOR ENERGY	32	4219401	Pending

4. As rightly observed by the respondent under the impugned order, the subject mark "ENERGY FOR THE JOURNEY" is inherently incapable of distinguishing the goods of one person from those of another person. The subject marks are too common to be monopolized by any individual. The subject mark "ENERGY FOR THE JOURNEY" are generic words used by

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many other people. It is well settled law that common language words or descriptive words or common words and names or single colour cannot be trademarked by any trader unless and until such trade names have acquired such a great reputation and goodwill in the market that the common language word has attained a secondary significance.

5. In the case on hand, as per the Trade Mark application submitted by the appellant, the appellant has only proposed to use the Trade Mark "ENERGY FOR THE JOURNEY" and the said Trade Mark has not been put to use by the appellant earlier.

6. Section 9 (1) of the Trade Mark Act, 1999 also makes it clear that when a mark designates 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 service, it is an absolute ground to refuse registration of the said Trade Mark.

7. This Court is of the considered view that the Trade Mark registry under the impugned order has rightly applied Section 9 (1). If a mark is

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devoid of any distinctive character, which is not capable of distinguishing the goods or service of one person from those of another person, it is an absolute ground to refuse registration of the said mark. The Registry has rightly applied Section 9 (1) (a) of the Act to the case of the appellant and has rightly refused to register the subject mark "ENERGY FOR THE JOURNEY" in favour of the appellant as the said mark is incapable of distinguishing the goods of one person from those of another and the mark is devoid of any distinctive character.

8. For the foregoing reasons, this Court does not find any merit in this appeal. Accordingly, this appeal is dismissed. No Costs. However, liberty is granted to the appellant to seek for registration of the very same Trade Mark in the near future, if the appellant is able to establish that by the long usage of the said Trade Mark, the said Trade Mark has become distinctive.

19.11.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE.J.,

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