2023:MHC:4271

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

CMA (TM) No.5 of 2023

Nutri Feeds and Farms Private Limited,
No.904, 9th Floor, Brigade Rubix,
HMT Main Road,
Bengaluru – 560 013
Represented by its authorised signatory,
Mr.Mundaje Chicka Rajendra Shetty. ...Appellant

-vs-

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

PRAYER: Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trade Marks Act, 1999, praying to set aside the impugned order dated 01.07.2022 and consequently direct the respondent to register the Trade Mark Application No.5028674.

For Appellant : Mr.Keerthikiran Murali

For Respondent : Mr.C.Samivel
Senior Panel Counsel

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JUDGMENT

The appellant assails an order dated 01.07.2022 by which Application No.5028674 for registration of the following device mark was refused:



2. The appellant applied for registration of the device mark extracted above on 02.07.2021 on a "proposed to be used" basis. The said application was under Class 35 in relation to advertising, business management, organization and administration, and office functions. By examination report dated 14.07.2021, the Registrar of Trade Marks raised objections under Section 9(1) of the Trade Marks Act, 1999 (the Trade Marks Act) on the ground that the mark is non-distinctive. By reply dated 14.08.2021, the appellant asserted that the device mark is distinct and that a stylized font was used in the colours red and black with the image of a rooster artistically

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presented beside the text and the corporate name of the appellant set out beneath the words "The Better Chicken". Consequently, the appellant asserted that the mark, when viewed as a whole, is distinctive and capable of being registered as a trade mark. After a hearing on 18.05.2022, by order dated 01.07.2022, the application was rejected under Section 9(1)(b) of the Trade Marks Act on the ground that the mark may serve in trade to designate the kind, intended purpose, or other characteristics of the service.

3. Learned counsel for the appellant invited my attention to the device mark and pointed out that the identical device mark was previously registered with effect from 02.07.2021 under Class 31 which relates to agricultural, aquacultural, horticultural and forestry products; live animals; food stuffs; beverages for animals and the like. When registration was granted for the identical device mark in relation to a class of goods which are more closely related to the business of the appellant, learned counsel submitted that the refusal of the present application is completely unjustified.

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4. In response to these contentions, learned counsel for the respondent submitted that Section 9 of the Trade Marks Act contains absolute grounds of refusal and that the appellant's mark being descriptive of the kind, intended purpose or characteristics of the service is incapable of distinguishing the services of the appellant from those of others. Therefore, he submitted that the impugned order does not warrant interference.

5. On examining the mark, it is clear that it is a device mark consisting of the image of a rooster in red colour. Beside the image of the rooster, the words "The Better Chicken" are written in a stylized font in a combination of red and black color. Beneath the words "The Better Chicken" is written "By Nutri Feeds & Farms Pvt. Ltd", thereby indicating the corporate name of the appellant. When viewed as a whole, the device mark is distinctive and does not fall within the prohibition under Section 9 of the Trade Marks Act.

6. It should also be noticed that the appellant previously obtained a certificate of registration in Class 31 for the identical device mark. The

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impugned order merely draws reference to Section 9(1)(b) of the Trade Marks Act as the reason for refusal. For reasons set out above, the impugned order is unsustainable and is, hereby, set aside. The application shall proceed to registration subject to the incorporation of the limitation that the appellant shall not claim exclusive use of the words "The Better Chicken", whether used as individual words or in combination. It is made clear, however, that this order will not be binding on opponents, if any.

7. The appeal is allowed on the above terms without any order as to costs.

20.09.2023

Index:Yes
Speaking Order
Neutral Citation:Yes
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SENTHILKUMAR RAMAMOORTHY,J.

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To

The Registrar of Trade Marks,
Intellectual Property Building,
G.S.T. Road, Guindy,
Chennai – 600 032.

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