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

\+ C.A.(COMM.IPD-TM) 164/2021

INTEGRAL EDUCATION SOCIETY ..... Appellant

Through: Ms. Vindhya S. Mani, Mr. Gursimran Singh Narula, Ms. Vaishali Joshi and Mr. Rishabh Paliwal, Advocates.

versus

THE REGISTRAR OF TRADE MARKS ..... Respondent

Through: Ms. Pratima N. Lakra, CGSC with Ms. Vanya Bajaj, Advocate.

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*"] impugns order dated 07th January, 2019 whereby Appellant's review petition against order dated 11th May, 2018, has been rejected. The challenge is in effect to the impugned order of refusal dated 11th May, 2018 read along with Statement of Grounds of decision dated 21st June, 2018 [hereinafter separately "*Refusal Order*" and "*Statement of Grounds*"] whereby Appellant's multi-class application for registration of the device mark '

' *vide* Trade Mark Application No. 2486600 under Classes- 16, 35 and 41 [hereinafter "*subject mark*"], was rejected. Reasons disclosed in the Statement of Grounds are as follows:

"With reference to the above and request on Form TM-M dated

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23/05/2018. It has been decided by the Registrar of Trade Marks to Inform you that hearing in respect of above application was held on 02/05/2018 and the said application is refused on the following Grounds;

Ms. Ashna Pruthi Adv appeared and no documentary evidence filed in support of application more over reply of examination report is not satisfactory and objection under sec-9 raised in the examination report, application refused

* 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 case, the above mentioned application is refused."

[Emphasis supplied]

2. Although the impugned orders are also assailed in the issue of non-filing of user affidavit, which ground was argued by the Appellant in a review petition albeit unsuccessfully, however, in the opinion of the Court, we need not engage with this issue and rather consider the case on merits.

3. Appellant has several registrations for identical marks in several other classes, details whereof are given in a tabular chart culled out in paragraph No. 3(f) of the appeal. Trademark registrations have been granted in multiple classes including Class-16, 35 and 41 for similar trademarks, in favour of Appellant and its sister concern 'Jaipuria Edutech Foundation'. The sister concern has given a no-objection to the registration of the subject mark by the Appellant. There are hardly any differences between the subject mark and the formative marks, which have already been registered. The registered marks contain the same logo and the word 'JAIPURIA', which

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are prominent features of the subject mark.

4. In view of the above, objection under Section 9(1)(*a*) of the Act that the subject mark lacks distinctiveness, cannot sustain. The subject mark cannot also be held to be descriptive of the characteristic of the services for which it is intended to be used. Accordingly, the present appeal is allowed with the following directions:

(i) Impugned order dated 07th January, 2019 is set aside.

(ii) Trade Marks Registry is directed to process the registration 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.

5. With the above directions, the appeal is disposed of along with pending application(s), if any.

6. 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
as

(Corrected and released on: 24th April, 2023)

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