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IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 07.11.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A(TM).No.3 of 2024

Monster Energy Company
1 Monster Way, Corona,
California – 92879
USA,
through Power Agent
Mr.Raghavan Ravindran Nai,
Guindy, Chennai – 32. .. Appellant

Vs

The Registrar of Trade Marks,
Trade Mark Registry,
Intellectual Property Rights Building,
GST Road, Guindy,
Chennai – 32.

.. Respondent

Prayer: This Appeal is filed under Section 91 of the Trade Marks Act, 1999, against the order dated 30.11.2023 passed by the Registrar of Trade Marks.

For Appellant : Mr.Dwarakesh Prabhakaran

For Respondent : Ms.A.Anuradha, CGSC

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JUDGMENT

This application has been filed challenging the order dated 30.11.2023 passed by the respondent refusing to register the appellant's trademark “SUPER FUEL” under Section 11 of the Trade Marks Act, 1999, on the ground that the appellant's trademark “SUPER FUEL” is identical with similar registered trademarks.

2. In the impugned order, the respondent has referred to Application No.1363175, which pertains to a trademark “FUEL” for beers, minerals and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages.

3. The learned counsel for the appellant drew the attention of this Court to the impugned order and would submit that the appellant's trademark is “SUPER FUEL” and the appellant proposes to register the same under Class-32 as a non-alcoholic beverages including carbonated drinks and energy drinks, etc., and therefore, according to him, by total non-application of mind to the fact that the trademark referred to in the impugned order pertains to different products, the respondent has passed

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the impugned order refusing to register the appellant's trademark "SUPER FUEL" under Section 11 of the Trade Marks Act, 1999. He would further submit that only after the appellant's trademark "SUPER FUEL" is allowed to be published in the trademark journal, objections can be received by the respondent and the respondent will get an opportunity to decide those opposition petitions on merits and in accordance with law, after affording a fair hearing to the petitioner.

4. This Court is in agreement with the submissions made by the learned counsel for the appellant, in view of the fact that the trademark registration applied for by the appellant is for the trademark "SUPER FUEL" and it has been applied for registration under Class-32 in respect of non-alcoholic beverages, whereas Application No.1363175 referred to in the impugned order by the respondent pertains to a trademark by name "FUEL" for beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages. Therefore, unless and until the appellant is permitted to publish its trademark "SUPER FUEL" in the trademark journal, the question of rejecting the appellant's application at this stage by the respondent does not arise in view of the fact that reference made in the

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impugned order pertains to an application submitted by an applicant seeking for registration of a trademark “FUEL” in respect of different products.

5. For the forgoing reasons, the impugned order dated 30.11.2023 passed by the respondent is hereby quashed and this appeal is allowed by directing the respondent to permit the appellant to publish its trademark “SUPER FUEL” in trademark journal and thereafter, if the respondent receives any opposition petition from any third party for registration of the appellant's trademark “SUPER FUEL”, the said opposition petition can be considered on merits and in accordance with law, after affording a fair hearing to the petitioner.

07.11.2024

rkm
Index:yes/no
Neutral citation: yes/no

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To

The Registrar of Trade Marks,
Trade Mark Registry,
Intellectual Property Rights Building,
GST Road, Guindy,
Chennai – 32.

ABDUL QUDDHOSE,J.

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