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

\+ C.A.(COMM.IPD-TM) 48/2022

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: 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*"] 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

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the device mark ‘

’ under Trade Mark Application No. 2486602 in Classes-16, 35 & 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 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 on 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

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multiple classes including Classes-16, 35 and 41 for similar trademarks, in favour of Appellant and its sister concern 'Jaipuria Edutech Foundation'. The sister concern has also given a no-objection to the registration of the subject mark by the Appellant. It is noticed that the Trade Marks Registry has already granted registration to a similar mark (*vide* Trade Mark Application No. 2486601) – '

' under Classes-16, 35 and 41. On comparison of this mark *vis-à-vis* subject mark, the only difference manifest is the inclusion of the name of four cities.

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. Ms. Vindhya S. Mani, counsel for Appellant, states that the Appellant is not claiming exclusivity in either the words 'INSTITUTE OF MANAGEMENT' or name of the cities which feature in the subject mark.

5. In view of the fore-going, 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.

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(v) It is clarified the subject mark shall not grant any exclusive rights in the words 'INSTITUTE OF MANAGEMENT" or the name of the cities which comprise the subject mark, separately or individually. This disclaimer/ condition and limitation, shall be reflected in the Trade Marks Journal, at the time of advertisement, if the subject mark ultimately proceeds for registration.

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

7. 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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