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

\+ C.A.(COMM.IPD-TM) 19/2021

AMRIT CORP. LIMITED ..... Appellant

Through: Mr. Gurinder Singh, Advocate.

versus

THE REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC 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

% 16.01.2023

1. The present appeal under Section 91 of Trade Marks Act, 1999 [hereinafter "***the Act***"] impugns order dated 18th September, 2019, whereby Appellant's application no. 2871271 for registration of label mark *viz.*



' under Class 29 [hereinafter "***subject mark***"] has been refused. The relevant portion of the impugned order reads as under:

> *"* 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*

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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."

2. Per the above extract, Senior Examiner objected to registration of subject mark under Section 9(1)(a) & (b) of the Act, finding it to be devoid of distinctiveness and descriptive of the goods for which it has been applied for.

3. Mr. Gurinder Singh, counsel for Appellant states that the Appellant is the registered proprietor of the trademark *viz.* "JUST" under application no. 2308477 and 2308478 for Class 29 and 30, respectively. Reliance is also placed upon the decision in ***Amrit Corp. Limited v. The Registrar of Trade Marks***,[1] wherein the Court allowed an appeal and directed the Trademark Registry to process registration of a label mark "JUST MILK" (*bearing* application no. 2909693).

4. The subject mark, a composite label mark which includes a graphical representation of a wave/ splash of milk along with words "JUST" and "MILK" – is capable of distinguishing goods of one person from another. Use of word "JUST" in relation to milk is plainly arbitrary and in conjunction with the word "MILK", it becomes suggestive. Appellant already has registrations for the word "JUST" in respect of milk/ milk products. Considering the above, objection under Section 9 of the Act *qua* lack of distinctiveness does not sustain.

5. In view of the above, appeal is allowed with following directions:

(a) Impugned order dated 18th September, 2019 is set aside.

(b) Trademark Registry is directed to process the registration application

[1] Order dated 13th December, 2022 in C.A.(COMM.IPD-TM) 55/2021.

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for the subject mark and proceed to advertisement of the label mark "JUST MILK" (under application no. 2871271), within a period of three months from today.

(c) If there is any opposition, the same shall be decided on its own merits, uninfluenced by observations made hereinabove.

(d) It is clarified that label mark "JUST MILK" shall not grant any exclusive rights in the word "MILK". This disclaimer shall be reflected in the trade marks journal at the time of advertisement and also 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 Trademark Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

JANUARY 16, 2023
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