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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.12.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(TM)/185/2023
(OA/SR.14/2020/TM/CHN)

FRESHTOHOME FOODS PRIVATE LIMITED,
Unit No.201 to 204, 'A' Wing.
No.1, 2nd floor, Carlton Towers,
Old Airport Road, Bangalore Urban,
Karnataka-560 008. ... Appellant

-vs-

The Registrar of Trade Marks,
Trade Marks Registry,
Chennai. ... Respondent

PRAYER: Transfer Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trade Marks Act, 1999, to record and call for the proceedings; to allow the appeal; to set aside the order dated 24.04.2019 passed by the Registrar of Trade Marks, Chennai; to accept the Application No.3703706 and proceed further in accordance with law.

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For Appellant : Ms.S.Harinyi

For Respondent : Mr.G.Ilangovan, CGSC

JUDGMENT

The appellant assails an order dated 24.04.2019 by which Application No.3703706 in Class 31 for registration of the following device mark was refused:



2. The appellant filed the application for registration of the device mark extracted above on 15.12.2017 by asserting use since 22.03.2016. By examination report dated 20.01.2018, the respondent raised an objection under Section 9(1)(b) of the Trade Marks Act,

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1999 (the Trade Marks Act). The examination report was responded to on 25.01.2018. In the said response, the appellant stated that the mark does not exclusively designate the kind, quality or intended purpose of the goods or services. The appellant also pointed out that the trade mark is a device mark and qualifies as being distinctive. Eventually, after a hearing on 23.04.2019, the impugned order was issued. The statement of grounds of decision was issued later on 01.11.2019. The present appeal arises in the said facts and circumstances.

3. Learned counsel for the appellant submitted that the application was submitted by asserting use since 22.03.2016. She pointed out that the appellant submitted an affidavit regarding use on 24.10.2017. In the said affidavit, the appellant indicated the sales turnover for the financial years 2015-2016 and 2016-2017. She also referred to invoices issued by the appellant in order to corroborate the assertion regarding use of the trade mark. By referring to the

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examination report, learned counsel pointed out that no conflicting marks were noticed. As regards the objection under Section 9(1)(b) of the Trade Marks Act, learned counsel submitted that the appellant's trade mark does not exclusively designate the kind, quality or intended purpose of the goods or services. She also submitted that it is a device mark and should be examined as a whole. By referring to the additional typed set, learned counsel pointed out that registrations were granted in respect of the identical trade mark in Classes 29, 30, 32, 35 and 43.

4. In response to these contentions, Mr.G.Ilangovan, learned CGSC, submits that the application was rejected with reference to Section 9(1)(b) of the Trade Marks Act. Since the said provision does not permit registration of trade marks which designate the kind, quality or intended purpose of the goods or services, he submits that the impugned order does not call for interference.

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5. The application was submitted in relation to a device mark. The said device mark consists of the following elements: the representation of three leaves; and the words “Fresh to Home” written adjacent to the said device in a stylised manner. After asserting use since 22.03.2016, the appellant has filed an affidavit specifying the turnover from the financial year 2015-2016 to the financial year 2016-2017 and for part of the financial year 2017-2018. In the financial year 2016-2017, which would correspond to the first year of the business, the turnover was Rs.2,04,71,795/-. Evidence of use from 31.03.2016 is on record in the form of invoices. Advertisements published by the appellant in the print media are also on the record. The examination report discloses that the only objection was with reference to Section 9(1)(b) of the Trade Marks Act.

6. Section 9(1)(b) of the Trade Marks Act prohibits the registration of a mark which consists exclusively of words or

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indications which serve in trade to designate the kind, quality or intended purpose of the goods or services. The appellant's trade mark does not appear to be a mark that falls within the prohibition of Section 9(1)(b) of the Trade Marks Act because there is a case to contend that it is suggestive and not descriptive. The appellant has also referred to the registration of the identical mark in multiple classes.

7. By taking into consideration the aforesaid facts, the impugned order is set aside and it is directed that the application shall proceed to advertisement. It is, however, made clear that this order will not be binding on opponents, if any. Consequently, (T)CMA(TM)/185/2023 is allowed without any order as to costs.

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Index : Yes / No
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