$~1

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

\+ C.A.(COMM.IPD-TM) 145/2021

UMANG DAIRIES LIMITED ..... Appellant

Through: Mr. Shivendra Pratap Singh and Mr. Navdeep Suhag, Advocates.

versus

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

% 21.02.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 [*hereinafter* "*the Act*"] arises from order dated 07th May, 2019 [*hereinafter* "*impugned order*"] whereby Appellant's Trade Mark Application No. 2477777 for the device mark '

' [*hereinafter* "*subject mark*"] for milk and milk products, falling under Class-29, was refused. Relevant portion of impugned order reads as under:

> "** 9 - Absolute grounds for refusal of registration.*
> ** 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,*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 20/05/2026 at 16:22:30

geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services.

** 11(1)(a) - Relative grounds for refusal of registration.- The said trade Mark is refused for registration because of its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or*

** 11(1)(b) - Relative grounds for refusal of registration. The said trade Mark is refused for registration because of its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.*

Application is devoid of any distinctive character. Objection under Section (9) sustained.

Identical/Similar, valid marks with same classification of goods/services vide application no.866318 is already on record. Likelihood of confusion. There is no supporting documents is on record claiming the use of the mark. Perused. Objection under Section (11) sustained. Trademark application is accordingly refused."

2. Mr. Shivendra Pratap Singh, counsel for Appellant, submits that the subject mark has been wrongly rejected. Appellant coined the subject mark in the year-1994 for sale of milk and milk products. They also have prior registration for the word mark 'WHITE MAGIK' (*vide* Trade Mark Application No. 1487784) under Class-29. Mr. Harish Vaidyanathan Shankar, CGSC for Respondent, opposes the petition and supports the reasoning given in the impugned order.

3. The Court has heard counsel for parties and perused the impugned order. The Senior Examiner has raised objections against the subject mark under Section 9(1)(*b*) of the Act for being indicative of the characteristics/ intended purposes of goods and services, for which the mark is applied. Additionally, he has refused registration under Section 11(1)(*a*) and 11(1)(*b*) of the Act, in view of other cited marks.

4. Appellant obtained registration for word mark 'WHITE MAGIK'

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 20/05/2026 at 16:22:30

under Class-29 (*vide* Trade Mark Application No. 1487784) on 15th September, 2006, which is valid and subsisting.[1] The said mark, as per Appellant, has been in use since the year-1994, and has acquired considerable reputation and goodwill in the field in which it is used, the Appellant has also filed an Affidavit dated 11th June, 2018 before the Respondent wherein the details of its sales figures from the years 1994-1995 till 2017-2018 are given. The subject mark is a composite device mark, comprising of two words 'WHITE' and 'MAGIK', along with graphic representation of milk being poured in a hot cup of tea/ coffee. In Court's opinion, while the word 'WHITE' may be correlated with "milk and milk products", however, when paired with 'MAGIK', the alternative spelling of 'MAGIC', the resulting composite mark 'WHITE MAGIK' does not relate to/ describe the goods to which the subject mark is applied to. Consequently, the subject mark cannot be considered descriptive but suggestive, at best. Further, Mr. Singh submits that Appellant is not claiming any proprietary rights over the words 'DIARY CREAMER', which forms part of the device mark/ label and is given in the bottom of the graphic representation. In light of the above, objection under Section 9(1)(*b*) of the Act is not sustained.

5. For deciding the objection under Section 11(1)(*a*) and (*b*) of the Act, it would be apposite to cull out the similar cited marks as per the Examination Report:

[1] Mr. Singh points out that although word mark was earlier registered under Trade Mark Application No. 622210 in the same class, however, on account of non-renewal – the said mark lapsed and thereafter, Appellant secured registration under the aforenoted Trade Mark Application No. 1487784.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 20/05/2026 at 16:22:30

GOVERNMENT OF INDIA
TRADE MARKS REGISTRY

LOCATION: DELHI
SECTION : EXM
REPORT : EXMR07

SEARCH REPORT - TM-54/60

USER: KNS
PAGE: 1
DATE: 19-Dec-2006

Receipt No : 452386 Receipt Dt : 03-Oct-2006 Class:25

APPL. NO	CLASS	CONFLICTING MARK	JOURNAL NO	PROPRIETOR NAME / ADDRESS	STATUS
GOODS/SERVICES:					
622210	29	WHITE MAGIK	9999 - 3	J.K. DAIRY AND FOODS LTD. LINK HOUSE, 5TH FLOOR, 3, BAHADURSHAH ZAFAR MARG, NEW DELHI - 110 002.	Registered
APPLICATION DATE: 16-Mar-1994					USER DATE:
GOODS/SERVICES: milk, milk and dairy products, condansed milk butter, ghee, cheese, paneer, cheens, milk chocolates and condies and such products, included in class 29.					
661753	29	CHOCO MAGIK	1328 - 2	JK DAIRY AND FOODS LIMITED LINK HOUSE, 5TH FLOOR, 3, BAHADURSHAH ZAFAR MARG, NEW DELHI - 110 002.	Registered
APPLICATION DATE: 06-Apr-1995					USER DATE: 01-Jan-1995
GOODS/SERVICES: Milk powder, liquid milk, milk derivatives, preserved, dried and cooked fruits and vegetables, edible oils and fats falling in class 29.					
6[illegible]1	29	MILK MAGIK	1275 - 1	JK DAIRRY AND FOODS LIMITED LINK HOUSE 5TH FLOOR, 3 BAHADURSHAH ZAFAR MARG, NEW DELHI - 110 002.	Registered
APPLICATION DATE: 23-Aug-1995					USER DATE:
GOODS/SERVICES: MILK POWDER FOR MILK SHAKE, HOT FLAVOURED MILK AND DAIRY PRODUCTS INCLUDED IN CLASS 29.					
677722	29	MAGIK SHAKE	1275 - 1	JK DAIRY AND FOODS LIMITED LINK HOUSE, 5TH FLOOR, 3, BAHADURSHAH ZAFAR MARG, NEW DELHI - 110 002.	Registered
APPLICATION DATE: 23-Aug-1995					USER DATE:
GOODS/SERVICES: MILK POWDER FORR MILK SHAKE, HOT FLAVOURED MILK, MILK AND DAIRY PRODUCTS INCLUDED IN CLASS 29.					
1082748	29	MILKY MAGIK	1334 - 1	GOVIND MILK & MILK PRODUCTS PVT. LTD. PANDHARPUR ROAD, GANESHSHERI - PHALTAN - 415 523.	Registered
APPLICATION DATE: 25-Feb-2002					USER DATE:
GOODS/SERVICES: MILK AND MILK PRODUCTS, MILK POWDER, MALTED MILK POWDER, BUTTERS, CHEESE, GHEE, CONDENSED MILK, SKIMMED MILK.					

6. From the above, it is seen that Appellant's own registered mark – 'WHITE MAGIK', has not been cited. Be that as it may, the subject mark when compared as a whole to other conflicting cited marks is found to be *prima facie* dissimilar, except for the common word 'MAGIC'/ 'MAGIK' incorporated in all the marks. In light of the above, the ground under Section 11(1)(*a*) and (*b*) of the Act is devoid of merit.

7. Further, the impugned order records – "*There is no supporting documents is on record claiming the use of the mark*" (sic). However, on perusal of the court record, it is noticed that Appellant had in fact filed an

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 20/05/2026 at 16:22:30

Affidavit demonstrating use, which escaped the attention of the Senior Examiner, despite being on record on the date of hearing *i.e.*, 24th April, 2019.

8. For the fore-going reasons, present appeal is allowed with following directions:

(i) Impugned order 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) It is clarified the subject mark shall not grant any exclusive rights in the words 'WHITE' or 'DIARY CREAMER', separately or individually. This disclaimer shall be reflected in the Trade Marks Journal at the time of advertisement if the subject mark ultimately proceeds for registration.

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

10. 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

FEBRUARY 21, 2023/*d.negi*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 20/05/2026 at 16:22:30