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

\+ C.A.(COMM.IPD-TM) 138/2021

MAHARSHI PATANJALI VIDYA MANDIR SAMITI

..... Appellant

Through: Mr. Amique Khalid and Mr. Shahid Khan, Advocates.

versus

REGISTRAR OF TRADEMARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday and Mr. Krishnan V., Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 09.02.2024

1. The Appellant had preferred an application for multi-class registration of the trademark "PATANJALI NURSERY SCHOOL" under application No. 2123888,[3] which has been refused by Respondent on 04th September, 2018 on the ground of Sections 9(2)(a), 11(1)(a) and 11(1)(b) of the Trademarks Act, 1999 [*hereinafter,* "*Act*"].[4] The present appeal is directed against the said refusal.

2. During the pendency of the appeal, to meet the above-noted objections, the Appellant has modified the subject mark from word mark

[3] For classes 16, 25 and 41.
[4] As per Statement of Grounds and Reasons dated 28th September, 2018.

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"PATANJALI NURSERY SCHOOL" to a device mark "  " and to bring the said change on record, the Appellant has also filed Form TM-M on 05th January, 2023 with the Trademarks Registry.

3. Counsel for Respondent submits that even the modified device mark should not be accepted in view of declaration of "PATANJALI" as a well-known mark in relation to Ayurvedic, Medicines, Herbal Home Care, Food Product and Natural Personal Care, by the Registrar of Trademarks.

4. The Court has considered the afore-noted. The modified mark applied for is a composite logo, containing several features such as an encircled device of a book and a stick figure with blooming leaves/ flowers, with the words "PATANJALI RISHIKUL NURSERY SCHOOL" and phrase "Our Children Our Future" written around it. This distinguishes the modified mark from the marks cited in the Examination Report dated 21st June, 2012. Further, counsel for Appellant, on instructions, states that Appellant is willing to disclaim the word "PATANJALI" which incidentally, is also the name of Maharshi Patanjali, the author of Yoga Sutra. Insofar as the objection under Section 9(2)(b) is concerned, the Examination Report cites the mark "  " under

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trademark No. 2123882 and 2123884, which are both owned by the Appellant itself and therefore, the element of public deception or confusion stands eliminated.

5. For the foregoing reasons, the Appellant's application for the modified mark can proceed to advertisement before acceptance as per proviso to Section 20(1) of the Act. Accordingly, the appeal is allowed with the following directions:

(a) The impugned order dated 04th September, 2018 read with the Statement of Grounds dated 28th September, 2018 is set aside.

(b) Trademarks Registry is directed to process the Form TM-M filed by Appellant within four weeks from today, whereafter, the modified mark "

" be advertised before acceptance as per proviso of Section 20 of the Act, within a period of three months.

(c) It is clarified the subject mark shall not grant any exclusive rights in the words "PATANJALI". This disclaimer/ condition shall be reflected in the Trademarks Journal at the time of advertisement as also if the subject mark ultimately proceeds for registration.

(d) On advertisement in the Trademarks Journal, an intimation shall be sent by Trademarks Registry to the registered proprietor of the cited marks.

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

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(f) Appellant shall also send a copy of the order passed today to the proprietor of competing/ cited marks.

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

FEBRUARY 9, 2024
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