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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 06.02.2024

CORAM

**MR.JUSTICE N.SESHASAYEE**

(T)CMA(TM) No.135 of 2023

United Foods Public Company Limited
(A Thai Public Limited Company)
95 Thakarm Road
Samaedam, Bangkhuntien
Bangkok 10150, Thailand ... Appellant

Vs.

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

Prayer : Civil Miscellaneous Appeal filed under Section 91 of the Trademarks Act, 1999 to set aside the order dated 17.08.2018 issued by the respondent refusing the mark 'YOYO' vide application No.2839446 in Class 30.

For Appellant : Mr.Dwarakesh Prabhakaran
for M/s.Depenning and Depenning

For Respondent : Mr.A.R.Sakthivel,
Senior Panel Counsel


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**JUDGMENT**

The present appeal is filed challenging an order of the respondent rejecting appellant's application for registering its word mark 'YOYO'. The rejection happened vide order of the respondent dated 22.06.2018, which cites that the appellant's mark wears striking similarity to at least four other marks granted under Application No.1773260 dated 12.01.2009, 1783006 dated 09.02.2009, 1855602 dated 27.08.2009 and 2014074 dated 25.08.2010.

2. The learned counsel for the appellant submitted that each of these marks cited by the Registry to deny registration of appellant's mark are label marks with their distinctive feature and he further submitted that of the four marks, two have already expired. He also took this court to a typed set of papers showing the features of the aforesaid four marks to show how they are dissimilar to the mark of the appellant. The learned counsel submitted that the word 'YOYO' has been used by few other proprietors as could be seen in the Search Report even though the Registry has relied on only four among the few to deny registration of appellant's mark. He submitted that even the


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appellant is willing to make his mark a label mark to make it dissimilar to those or any of the other similar marks.

3. Heard both sides and perused the materials available on record.

4. This court has carefully weighed the submissions of the learned counsel for the appellant and finds some merits in that. When this court has carefully perused the typed set of papers containing pictures of the aforesaid four marks relied on by the respondent, each one of the marks appears to be a label and they have multiple features to distinguish themselves from the rest. Even as among four marks, there are special features that make them dissimilar to each other. Now in view of the fact that the appellant is also inclined to make his mark a label mark, it would be only appropriate that he is given an opportunity to do the same.

5. This court, therefore allows this appeal, remands the matter back to the respondent with a direction to the appellant to amend his application suitably as a label mark within a period of eight weeks from the date of receipt of a


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copy of this judgment and the respondent is now required to apply his mind to the amended mark *de novo*. No costs.

06.02.2024

Asr
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To
The Registrar of Trade Marks
Trade Marks Registry
Chennai


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N. SESHASAYEE, J.

Asr

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