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

\+ C.A.(COMM.IPD-TM) 77/2021

SIDDHARTH SURI ..... Appellant

Through: Mr. Ankit Rastogi, Ms. Chamanpreet Kaur and Mr. Siddharth Vardhman, 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

% 10.01.2023

1. Appellant has tweaked the name of Indian archipelago in the Bay of Bengal 'Andaman' Islands or perhaps, name of 'Andaman' Sea as '**ANDAMEN**' and applied for registration under Trade Mark Application No. 2849573 on *proposed to be used* basis for goods falling under Class-18 [hereinafter "*subject mark*"]. The said application has been refused *vide* order dated 24th January, 2019 read along with Statement of Grounds of decision dated 21st February, 2019 [hereinafter "*Impugned Order*"]. Aggrieved by the above, Appellant has filed in instant appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"].

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2. Relevant portion of Statement of Grounds of decision are culled out below: -

> "With reference to the above and request on Form TM-M dated 29/01/2019. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 02/01/2019 and the said application is refused on the following Grounds;
> Adv. Ekta Sharma appeared and made submissions. Heard. Perused. Conflicting marks cited in the examination report phonetically similar and valid. Mark is filed on proposed to be used basis. Hence Refused.
> **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**."
>
> [Emphasis supplied]

The only ground alluded to for refusal of registration is Section 11(1)(*b*) of the Act on the basis of Examination Report, which cites following similar mark: -

GOVERNMENT OF INDIA
TRADE MARKS REGISTRY

INTELLECTUAL PROPERTY INDIA

LOCATION:
SECTION: EXM
REPORT: EXM007

WORD MARK SEARCH REPORT
APPLICATION NUMBER: 2849573
Class : ---
TRADEMARK: 'ANDAMEN'

USER : VSU
PAGE:1
DATE: 03/12/2015

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
GOODS SERVICES							
2355257	18	AND MEN		AND DESIGNS INDIA LIMITED	88, MAROL CO-OP. INDUSTRIAL ESTATE, M.V. ROAD, ANDHERI (EAST), MUMBAI-400059, STATE OF MAHARASHTRA, INDIA	Objected	AND MEN

APPLICATION DATE 28/06/2012

GOODS/SERVICE LEATHER AND IMITATIONS OF LEATHER AND ARTICLES MADE FROM THESE MATERIALS AND NOT INCLUDED IN OTHER CLASSES; SKINS; HIDES; TRUNKS AND TRAVELLING BAGS, UMBRELLAS PARASOLS AND WALKING STICKS; WHIPS, HARNESS AND SADDLERY, ALL BEING GOODS INCLUDED IN CLASS-18.

VIKAS SHUKLA
For REGISTRAR OF TRADE MARKS

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3. Counsel for the Appellant points out that although status of above cited mark is mentioned as "Objected", however, as on date, same has been Registered. He states that identical mark has already been registered under other classes and the cited mark ['

'] is entirely dissimilar. *Per contra*, Mr. Alexander Mathai Paikaday, counsel for Respondent, opposes the petition and states that in view of cited mark being visually and phonetically similar to subject mark, reasoning given by the Senior Examiner cannot be faulted with. Additionally, he refers to order dated 11th November, 2022, wherein the Court has made a *prima facie* observation that the subject mark could be objected to under Section 9 of the Act.

4. The Court has given due consideration to afore-noted contentions. Appellant has registration for identical marks in other classes, details whereof are given below: -

Registration No.	Trade Mark	Class	Cited mark in examination report	Current Status
2849574	ANDAMEN	25	AND MEN : 2355259	Registered (EXHIBIT 1, PG 5-6)
2849575	ANDAMEN	35(services under the present mark in class 18 are covered in this registration in class 35)*	AND MEN :2355257, 2355259 and 2355260	Registered (EXHIBIT 1, PG 7)
3003503	andamen	25	ANDAMEN: 2849574	Registered (ANNEXURE J, PG 47/ EXHIBIT 1, PG 3-4)

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5. The device mark ‘  ’ was also cited when Appellant’s registration under other classes was being considered, but ultimately the registrations were granted. Although the earlier registrations are for other classes, however, the cited mark, being a device mark, when compared to subject mark is *prima facie* dissimilar.

6. This brings us to objection under Section 9 of the Act *i.e.*, whether the subject mark serves as an indication of geographical origin, which is an absolute ground for refusal of registration. ‘ANDAMAN’ – name of the sea southeast of Bay of Bengal (Andaman Sea) also forms part of the name of a Union Territory of India (Andaman and Nicobar Islands), which is an Indian archipelago in the Bay of Bengal. As per Manual of Trade Marks Practice and Procedures,[1] registration of a name of place is permissible if the place does not have a reputation or association with geographical origin. There is *prima facie* merit in the contention that since ‘ANDAMEN’ does not have a reputation for goods falling under Class-18 [“*Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery*”]. That apart, ‘ANDAMEN’ already has word and device mark registrations under other classes, as noticed above, and thus absolute ground for refusal under Section

[1] Chapter II : Examination of Applications filed for Registration of Trademarks
12.2.1. “Geographical origin” – Name of places with populations of less than 5000 in India will prima facie be acceptable. *However if the location covers a large area having a reputation in respect of the goods or service, the application may attract objections.* [Emphasis supplied]

xx .. xx .. xx

Names of rivers, seas & deserts etc. – The names of rivers, seas, lakes and mountains etc. are usually accepted prima-facie for goods which are not associated with these geographical features.

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9(1)(*a*) would not be attracted.

7. In light of the above, present appeal is allowed with following directions:

(i) Impugned Order is set aside.

(ii) Trademark Registry is directed to process the registration application for the subject mark.

(iii) Subject mark be advertised without acceptance within a period of three months from today.

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

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

9. 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 10, 2023
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