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

DATED: 05.03.2024

CORAM

**MR.JUSTICE N.SESHASAYEE**

CMA(TM) No.12 of 2023

M/s.Mesmer Pharmaceuticals
Plot No.13, Ground Floor
Vedha Mangala Nagar
Porur, Chennai - 600 116
Represented by M.Hemalatha ... Appellant

Vs.

The Registrar of Trade Marks,
O/o Trademark Registry
Intellectual Property Office Building
GST Road, Guindy
Chennai - 600 032 ... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 91 of the Trademark Act, 1999 to set aside the order dated 31.03.2023 made in Application No.4962571 passed by the Registrar of Trademark, Chennai and direct the respondent to register the impugned trademark "REJUSTAR vide Aplication No.4962571.

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For Appellant : Mr.S.Sathyanarayanan

For Respondent : Mr.P.K.Ganesh,
Central Govt. Standing Counsel

**JUDGMENT**

This appeal is directed against the order of the Trade Marks Registry dated 31.03.2023 made in Application No.4962571, by which the Registrar has refused to register appellant's trademark 'REJUSTAR' in Class 5 on the ground that this mark is phonetically similar to a couple of other marks.

2. Heard both sides and perused the materials available on record in the form of typed set of papers.

3. The learned counsel for the appellant submitted that the appellant is engaged in manufacture and sale of pharmaceutical products and food supplement and had applied for registering its word mark under Class 5. The Trade Marks Registry had carried out necessary search and cited two other marks, namely, 'ROZUSTOR' and 'REGISTER' bearing striking resemblance to appellant's proposed mark. Both the marks cited by the Trade Marks Registry have been

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registered in Class 5.

4. The learned counsel further submitted that so far as 'ROZUSTOR' is concerned, it is being adopted for manufacture and sale of Schedule 'H' drug and it is pre-dominantly in use only in Sri Lanka and not in India. So far as the second mark 'REGISTER' is concerned, it is associated only with insecticides, fungicides, herbicides and preparation for destroying vermin. Secondly, appellant's mark is an invented mark and hence cannot be termed as a generic mark. He added that any invented mark may have to be considered as not deceptively similar to any other mark.

5. Though there is phonetical similarity between appellant's mark 'REJUSTAR' and the marks cited by the Trade Marks Registry, yet, it is too early to hold if it is going to be deceptively similar to any of the other two marks cited by the Trade Marks Registry. It has to be understood that the respondent has not decided the issue based on any opposition but only has exercised its authority at the point of scrutinising the application for registration under Section 11 of the Trade Marks Act.

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6. In view of the same, this court deems it appropriate to set aside the order. Accordingly, the order of the respondent dated 31.03.2023 made in Application No.4962571 is set aside and the matter is remanded back to the Trade Marks Registry for it to continue to process the application of the appellant from the stage where it was left. The entire exercise is required to be completed within a period of six months from the date of receipt of a copy of this order. No costs.

05.03.2024

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

To

The Registrar of Trade Marks,
O/o Trademark Registry
Intellectual Property Office Building
GST Road, Guindy
Chennai - 600 032

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N. SESHASAYEE, J.

Asr

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