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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.11.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(TM)/89/2023
(OA/17/2020/TM/CHN)

Ms.Mathangi Sampath,
252/1, Adarsh Palm Meadows,
Varthur Road, Whitefield,
Bangalore - 560 066, Karnataka. ... Appellant

-vs-

1.The Registrar of Trade Marks,
The Trade Marks Registry,
IP Office Building,
GST Road, Guindy, Chennai 600 032.

2.The Senior Examiner of Trade Marks,
The Trade Marks Registry,
IP Office Building,
GST Road, Guindy, Chennai 600 032. ... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying to set aside the impugned order of the respondent passed on 17.06.2019 and statement of grounds of decision dated 27.09.2019 received by us in

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correspondence no.TLA/202/27/09/2019 against registration of the Trade Mark with Application No.3795282 in Class 03 and thus render justice.

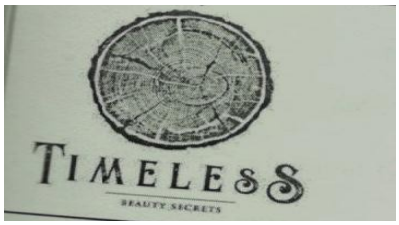
For Appellant : Mr.R.Sathish Kumar
for M/s.Altacit Global

For Respondents : Mr.A.R.Sakthivel, SPC

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JUDGMENT

The appellant challenges an order dated 17.06.2019 by which Application No.3795282 for registration of the following device mark



was refused.

2. The above mentioned application was filed on 03.04.2018

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asserting use since 06.03.2018 in relation to non-medicated cosmetics, toiletry preparations and the like. By examination report dated 07.05.2018, the respondent raised an objection under Section 11(1) of the Trade Marks Act, 1999 by citing two prior marks. The appellant responded thereto on 26.06.2018 and distinguished its mark from the cited marks. Eventually, by order dated 17.06.2019, the application was rejected under Section 11. In the statement of grounds of decision issued on 24.09.2019, the reason mentioned is the existence of similar marks on the register in respect of similar goods.

3. At the hearing on 20.11.2023, after making submissions, upon a suggestion from the Court, learned counsel for the appellant took time to obtain instructions as to whether the appellant is agreeable to modify the device mark in such a manner that the words "TIMELESS" and "BEAUTY SECRETS" are written in a common font of equal sizes beneath the pictorial device in the mark. Upon obtaining instructions, learned counsel submits that the appellant is agreeable to the said course of action.

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4. Mr.A.R.Sakthivel, learned SPC, justified the impugned order on the ground that there would be a likelihood of confusion in view of prior marks containing the element "TIMELESS".

5. Since the only objection was on the basis of prior marks containing the element "TIMELESS", if the device mark of the appellant is modified in the manner indicated above, the said mark would be sufficiently different from the cited marks. Accordingly, by directing the appellant to file the requisite application for modification of the mark in the manner described above, (T)CMA(TM)/89/2023 is disposed of by setting aside the impugned order and directing that the application based on the modified mark shall proceed for advertisement. It is made clear, however, that this order will not be binding on opponents, if any. It is also clarified that the appellant shall not claim exclusive use in respect of the individual elements. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

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