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

\+ C.A.(COMM.IPD-TM) 123/2022 & I.A. 8059/2022

SHIVANK DALMIA ..... Appellant

Through: Ms. Ekta Rai, Advocate.

versus

REGISTRAR OF TRADEMARK ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, Central Government Standing Counsel 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

% 10.05.2023

1. Appellant is in the business of manufacturing, marketing and selling various skincare and wellness products under the trademark 'REJUVENATING UBTAN HANDCRAFTED IN INDIA' and also possesses registration of the device " 

" in class 30 under trademark application No. 4009076. He is aggrieved with refusal of the trademark application No. 3588826 for the mark

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" in class 3 for "*herbal cosmetics, perfumery, essential oils, hair oils and lotions, shampoo, soaps and toiletries, face and body lotions, skin care preparations and dentifrices*".

2. The aforesaid application was rejected by the Senior Examiner *vide* order dated 08th April, 2021 for the following reasons:

> *"Section 9(1) (b) - The mark applied for registration is objectionable under S 9(1)(b) of the Trade Marks Act 1999, as it consists of which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service.*
>
> *The applied trademark "REJUVENATING UBTAN HANDCRAFTED IN INDIA" for the applied specification "HERBAL COSMETICS, PERFUMERY, ESSENTIAL OILS, HAIR OILS AND LOTIONS, SHAMPOO, SOAPS AND TOILETRIES, FACE AND BODY LOTIONS, SKIN CARE PREPARATIONS AND DENTIFRICES, ALL BEING GOODS INCLUDED IN CLASS-3" is highly descriptive in nature and may serve in trade to designate quality of the applied specification. The words used in the applied trademark indicate the intended purpose of the specification. The applied trademark for the applied specification, per se not registrable.*
>
> *User Claimed:- The application has been filed on proposed to be used basis. No relevant documents filed for establishment of the trademark.*
>
> *The Present case also does not fall in category of "proviso" to Section 9 (1) and case of any acquired distinctiveness has not proved by any satisfactory evidence.*
>
> *The objections raised in the Examination Report under section 9(1) (b) of the Trade Marks Act, 1999 cannot be waived. After perusal of records and submissions by the attorney in this regard, the registration of the mark is objectionable under section 9(1) (b) of the trademarks act, 1999.*
>
> *After perusal of all the documents on record and submission made by the applicant / authorised agent it is concluded that applied mark is not registrable because of the reason stated as above. Hence application no 3588826 cannot be accepted and refused accordingly."*

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3. Amongst the several grounds of appeal, counsel for Appellant points out a procedural irregularity of violation of principles of natural justice. He contends that the Appellant was not afforded a hearing before passing of the impugned order. This contention is refuted by Mr. Harish Vaidyanathan Shankar, CGSC for Respondent, however, without prejudice to his rights and contentions, he submits that the appropriate directions could be issued for providing a fresh hearing to the Appellant.

4. *Prima facie,* it appears that the Appellant has been commercially using the mark "

" for the concerned goods since sometime and has already obtained a registration in his favour. Thus, in the opinion of the Court, the rejection of the application without affording a hearing has substantially affected his rights. Therefore, the present appeal is allowed with the following directions:

(i) Impugned order dated 08th April, 2021, is set aside.

(ii) The Respondent is directed to provide a fresh hearing to the Appellant in respect of the afore-noted trademark application, within a period of four months from today. For this purpose, a hearing notice shall be issued within four weeks from today.

5. With the above directions, the appeal is disposed of.

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6. It is clarified that the Court has not examined the merits of the case.

SANJEEV NARULA, J

MAY 10, 2023
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