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

\+ C.A.(COMM.IPD-TM) 134/2022

VALVERDE NORAMBUENA LTDA ..... Appellant

Through: Mr. Abhishek Saket and Ms. Shahana Farah, Advocates.

versus

REGISTRAR OF TRADEMARKS ..... 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

% 24.03.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"] impugns order dated 20th December, 2018 read along with Statement of Grounds of decision dated 21st February, 2019 both passed by Senior Examiner [hereinafter "*impugned order*"] whereby Appellant's Trade Mark Application No. 2839460 for registration of device mark – '

' under Class-25 for "Child Costume" [hereinafter "*subject mark*"], has been refused. Reasons discernible from the Statement of Grounds of decision, are as follows:

> "*With reference to the above and request on Form TM-M dated 16/01/2019. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 19/12/2018 and the said application is refused on the following Grounds;*

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** Adv. Manish 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)(a) - Relative grounds for refusal of registration.- The said trade Mark is refused for registration because of its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or*"

2. As can be noticed from the above extract, the only ground of objection cited is Section 11(1)(*a*) of the Act, for which, reference to the 'Word Mark Search Report' is necessary which cites the following conflicting marks:

LOCATION:
SECTION: EXM
REPORT: EXM007

WORD MARK SEARCH REPORT
APPLICATION NUMBER: 2839460
Class : ---
TRADEMARK: 'BLACK AND BLUE'

USER : PSH
PAGE:1
DATE: 20/11/2015

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
GOODS SERVICES							
1880288	25	BLACK AND BLUES	1547	MR. MAHESH J. PAREKH	199, R . C BARRACK NO 17, BEHIND SHIV TEMPLE, NEAR NAVJIVAN SOCIETY, CHEMBUR COLONY, CHEMBUR, MUMBAI 400074	Registered	BLACK & BLUES
APPLICATION DATE 04/11/2009 15:55:28							
GOODS/SERVICE READYMADE GARMENTS AND ALL ITEMS							
2179312	25	BLACK N BLUE		JAMAL MOHAMED.K	EAST BAZAR TIRUR-676101 MALAPPURAM DIST KERALA	Objected	BLACK BLUE
APPLICATION DATE 22/07/2011							
GOODS/SERVICE SLIPS, BRASSIERS, BRIEF, PANTIES, VEST, TRUNKS, SHIRTS, T. SHIRT, KIDSWEAR, PANTS, TROUSERS, SOCKS, INNER GARMENTS AND ALL KINDS OF READYMADE GARMENTS AND OTHER PRODUCTS INCLUDED IN CLASS 25							
2191637	25	BLUE N BLACK		DALIP SONKAR	6247 3RD FLOOR GALI NO 1 BLOCK NO 6 DEV NAGAR DELHI 110005	Objected	
APPLICATION DATE 17/08/2011							
GOODS/SERVICE JEANS, JACKETS, SHIRTS & TROUSER & TROUSERS							
2191639	25	BLACK N BLUE		DALIP SONKAR	6247 3RD FLOOR GALI NO 1 BLOCK NO 6 DEV NAGAR DELHI 110005	Objected	
APPLICATION DATE 17/08/2011							
GOODS/SERVICE JEANS, JACKETS, SHIRTS & TROUSERS							
2275313	25	BLUE BLACK (LOGO)		KEVAL KISAN ARORA	2-C, FIRST FLOOR, DDA FLAT, NEAR SHADI PUR METRO STATION PANDAV NAGAR NEW DELHI-8	Objected	BLUE BLACK
APPLICATION DATE 01/02/2012							
GOODS/SERVICE READYMADE GARMENTS							

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2280824	25	BLACK & BLUE (DEVICE)	MR. VARUN ARYA	E 16/1173 BASEMENT KHALSA NAGAR TANK ROAD KAROL BAGH NEW DELHI 110005	Objected

APPLICATION DATE 10/02/2012

GOODS/SERVICE SHIRTS, JEANS, JACKETS, PULLOVERS, T-SHIRT.

BLACK & BLUE

2458982	25	Blue & Blue	RASIK K. GAMI	SHOP NO. 4, 44, OPP. KHIRA NAGAR, BISLERI COMPOUND; S.V. ROAD, KHOTWADI, SANTACRUZ (WEST), MUMBAI-400054.	Objected

APPLICATION DATE 11/01/2013

GOODS/SERVICE LADIES WEAR INCLUDING KURTI, PYJAMA, CHUDIDAR, JEANS, PANT, T-SHIRT, SKIRT, WESTERN OUTFIT, CLOTHING INCLUDED IN CLASS 25

Blue & Blue

PARVESH KUMAR
For REGISTRAR OF TRADE MARKS

3. At the outset, Mr. Abhishek Saket, counsel for Appellant, has handed over documents reflecting the current status of the cited marks, as reflected on the portal of Trade Marks Registry. The same are taken on record. In terms thereof, the first two cited marks at serial Nos. 1 and 2,[1] have not been renewed and have lapsed on account of non-payment of the renewal fee; cited marks at serial Nos. 3 and 4 have been refused; [2] marks at serial No. 5 and 6 have been abandoned. [3] This brings us to the cited mark at serial No. 7 which is a device mark – ‘ Blue & Blue ’ comprising of the words ‘Blue & Blue’.[4] Appellant’s subject mark, which is a device mark – ‘ BLACK AND BLUE ’, comprises of a logo and words ‘Black and Blue’. On comparison, the two device marks are *prima facie* dissimilar.

4. In view of the above, in the opinion of the Court, the subject mark

[1] Trade Mark Application Nos. 1880288 and 2179312.
[2] Trade Mark Application Nos. 2191637 and 2191639.
[3] Trade Mark Application Nos. 2275313 and 2280824.

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should be allowed to proceed further for registration and accordingly, the appeal is allowed with the following directions:

(i) Impugned order is set-aside.

(ii) Subject mark be advertised within a period of three months from today.

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

(iv) Appellant will only be entitled to use the subject mark as a composite mark and cannot claim exclusive rights in either of the words 'BLACK' or 'BLUE' comprising the mark, individually or separately. This disclaimer shall be reflected in the Trade Marks Journal at the time of advertisement and also if the subject mark ultimately proceeds for registration.

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

6. Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

MARCH 24, 2023
as

[4] Trade Mark Application No. 2458982.

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