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

\+ C.A.(COMM.IPD-TM) 117/2022

BOSE CORPORATION ..... Appellant

Through: Mr. Pravin Anand, Ms. Swati Sharma and Ms. Andri Shukla, 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

% 17.01.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 [*hereinafter*, "***the Act***"] impugns order dated 30th July, 2019 [*hereinafter*, "***impugned order***"], whereby the Senior Examiner of Trade Marks has refused Appellant's Application No. 2778448 for registration of the mark "SOUNDLINK" in respect of speakers and other related goods falling under class 9 [*hereinafter*, "***subject mark***"]. Relevant portion of the impugned order is culled out below: -

> *"A Hearing in respect of the above matter came up before me on 20/06/2019 and the following is to be communicated to the applicant/agent:*
>
> ** 9 - Absolute grounds for refusal of registration.*
>
> ** 9(1)(b) - The Trade Mark consist exclusively of marks or*

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indications which 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 services.

** 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*

** 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.*

Application is devoid of any distinctive character. The mark is a combination of non-distinctive words. The mark is descriptive in nature and shows the intended purpose related to goods. The applicant claims user from 2010. There is no supporting documents and relevant document is on record claiming the use of the mark. Objection under Section (9) sustained. The matter has been adjourned several time. TM-M cannot be allowed. Trademark application is accordingly refused under Section 18(4) of the Trade Marks Act, 1999."

2. Mr. Pravin Anand, counsel for Appellant, submits that the subject mark "SOUNDLINK", a combination of two words – "sound" and "link" put together, has no dictionary meaning, making it inherently distinctive. The impugned order is erroneous and does not correctly comprehend the law on registration of trademarks. He emphasises that the test for determining descriptiveness of a mark is to see whether the mark is so close and direct that it becomes apparently descriptive of goods to which it is applied, or is used approximately in the same form by all merchants engaged in same trade. The subject mark being remote, subtle and fanciful, is capable of functioning as a trademark. To overcome the objections under Section 11(1)(a) and (b), Mr. Anand differentiates the cited marks and asserts that they do not hinder registration of the subject

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mark.

3. On the other hand, Mr. Alexander Mathai Paikaday, counsel for Respondent, strongly opposes the appeal and states that the word "sound" in relation to speakers is plainly descriptive and therefore, the application has been rightly refused.

4. The Court has considered the aforenoted contentions. The subject mark "SOUNDLINK", which comprises of two words "sound" and "link", does not have a dictionary meaning and is a made-up word and therefore, is distinctive. Albeit the word "sound" contained in the subject mark is a generic word, and when used in relation to speakers, it is plainly descriptive; however, Appellant is not claiming any exclusive rights over the said word. Distinctiveness is claimed in the combination of "sound" and "link", without any space between them. The resulting coined expression has no clear or obvious reference to the goods with which it is associated, and requires imagination to establish a connection between them. It must also be noted that the Appellant possesses registrations of identical mark in various other jurisdictions such as European Union, Canada, Colombia, Peru, Chile, Korea, Russia, Hong Kong and USA. It has also produced sufficient material to prove continuous use of the subject mark since 2010 and widespread sales online as well as through 35 retail stores. These material facts which indicate reputation and accumulation of goodwill through use, have not been taken into consideration by the Senior Examiner. Thus, for the foregoing reasons, the Court does not find objections under Section

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9(1)(b) to be sustainable.

5. Next, turning to objection under Section 11, similar cited marks are as follows:

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
GOODS SERVICES							
1261100	9	SS SOUND (LABEL)	1328	SUNDER SHYAM BHATIA	C - 1204, DHEERAJ RESIDENCY, NEW LINK ROAD, GOREGAON (W), MUMBAI - 400 104.	Registered	
APPLICATION DATE 14/01/2004 15:02:00							
GOODS/SERVICE SS SOUND MULTI TRACK DIGITAL STEREO PROVIRTUAL.							
1547421	9	SOUNDTILE	1398	M/S. KOHLER CO.	444 HIGHLAND DRIVE, KOHLER, WISCONSIN, UNITED STATES OF AMERICA.	Registered	
APPLICATION DATE 09/04/2007 14:15:00							
GOODS/SERVICE SCIENTIFIC, NAUTICAL, SURVEYING, PHOTOGRAPHIC, CINEMATOGRAPHIC, OPTICAL, WEIGHING, MEASURING, SIGNALING, CHECKING (SUPERVISION), LIFE-SAVING AND TEACHING APPARATUS AND INSTRUMENTS; APPARATUS AND INSTRUMENTS FOR CONDUCTING, SWITCHING, TRANSFORMING, ACCUMULATING, REGULATING OR CONTROLLING ELECTRICITY; APPARATUS FOR RECORDING, TRANSMISSION OR REPRODUCTION OF SOUND OR IMAGES; MAGNETIC DATA CARRIERS, RECORDING DISCS; AUTOMATIC VENDING MACHINES AND MECHANISMS FOR COIN-OPERATED APPARATUS; CASH REGISTERS, CALCULATING MACHINES, DATA PROCESSING EQUIPMENT AND COMPUTERS; FIRE¬EXTINGUISHING APPARATUS; SPEAKERS, AUDIO SPEAKERS, SPEAKER ENCLOSURES, AND SOUND TRANSMITTING APPARATUS FOR USE IN BATHROOMS, SHOWERS, AND BATH ENCLOSURES.							
1954394	9	SOUNDD LANE	1476	PANKAJ GOEL	4837/2 NO-24 GALI PRAHALAD LANE ANSARI ROAD DARYA GANJ NEW DELHI-110002	Registered	
APPLICATION DATE 22/04/2010							
GOODS/SERVICE COMPLETE RANGE OF PUBLIC ADDRESS SYSTEM INCLUDED AMPLIFIERS CASSETTE AMPLIFIERS, MICROPHONE. REFLEX HORN, SOUND COLUMN, SPEAKERS , MICROPHONE STAND, CONFERENCE SYSYTEM, ECHO, MEGAPHONE, UNIT HORN COMBINATION AND ACCESSORIES AND ALL SPARE PARTS, RADIOS, TELEVISION, HOME AUDIO, AND ALL KIND OF ELECTRONICS AND ELECTRICALS INCLUDED IN CLASS-9 FOR INDIA AND EXPORT AS WELL.							
2225835	9	SOUNDLIGHT COMFORT		KONINKLIJKE PHILIPS ELECTRONICS N.V.	GROENEWOUDSEWEG 1, EINDHOVEN, THE NETHERLANDS	Objected	
APPLICATION DATE 27/10/2011							
GOODS/SERVICE CONTROL APPARATUS AND SOFTWARE PROGRAMS FOR LIGHTING SYSTEMS; ELECTRONIC CHOKES (BALLASTS) FOR LIGHTING PURPOSES; LIGHT EMITTING DIODES (LEDS), LASER DIODES AND ZENER DIODES; ELECTRONIC COMPONENTS FOR LIGHTING PURPOSES, NAMELY, BALLASTS, STARTERS, CAPACITORS AND LED MODULES IN WHOLE OR PARTLY CONSISTING OF INTEGRATED LEDS, OLEDS, POLYMER EMITTING DIODES; OPTICAL CONTROL APPARATUS, THERMIC CONTROL APPARATUS, ELECTRONIC CIRCUITS FOR LIGHTING CONTROL SYSTEMS AND LIGHTING MANAGEMENT SYSTEMS; APPARATUS FOR REGULATING OF COLOUR DISPLAY.							

6. The cited marks when compared as a whole, are *prima facie* dissimilar to subject mark, except for the word “sound”, over which no right is being claimed by Appellant. The competing composite marks must be compared on the basis of overall appearance and commercial impression and not by dissecting individual features. Applying this test,

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commonality of word "sound" *prima facie* is not likely to cause confusion.

7. In view of the above, the Court is inclined to allow the present appeal with the following directions:

(a) The impugned order dated 30th July, 2019 is set aside.

(b) Trademark Registry is directed to proceed with registration of Application No. 2778448 for the mark "SOUNDLINK".

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

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

(e) Appellant shall not have any exclusive rights over the words "SOUND" or "LINK" independently. This disclaimer shall be reflected in the trademarks journal at the time of advertisement, and also if the subject mark ultimately proceeds for registration.

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 17, 2023/*nk*
(Corrected and released on 01st February, 2023)

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