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

\+ C.A.(COMM.IPD-TM) 34/2022

KOHLER CO. ..... Appellant

Through: Mr. Philip Abraham and Mr. Manish Kumar, 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

% 16.01.2023

1. The present appeal under Section 91 of Trade Marks Act, 1999 [hereinafter "***the Act***"], impugns order dated 14th June, 2019, read along with statement of grounds of decision dated 03rd January, 2020, both passed by Senior Examiner of Trademarks, whereby Appellant's application no. 2567324 for registration of mark "BELIEVING IN BETTER" [hereinafter "***subject mark***"] has been refused for services relating to promoting public interest and awareness in the field of kitchen and bath products, furniture and home interior products, engines and generators etc. falling under Class 35. The relevant portion of statement of grounds reads as under:

> *"* Adv. Sriram appeared and made submissions. Heard. Perused. Objection under Section 9(1) (a) sustained. Mark Is devoid of any distinctive character. Mark Is filed on proposed to be used basis. Hence Refused.*
> ** 9(1)(a) The trade mark Is devoid of any distinctive character, that is to say, not capable of Distinguishing the goods or services of one person from those of another person:*
> *The Trademark application Is refused on account of following reason:-*
> *Section 9: The Trademark "BELIEVING IN BETTER" is clearly non-distinct*

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and common in nature. The said Present case also does not fall In category of "proviso" to Section 9(1) as the said mark is filed on proposed to used basis."

2. Senior Examiner has held that the subject mark is devoid of the distinctive character as it is incapable of distinguishing the goods or services of person from another. Further, given that Appellant had applied for subject mark in category of '*proposed to be used'*, benefit of proviso under Section (9)(1) of the Act could not be availed.

3. Counsel for Appellant argues that the above reasoning is not only vague, but also flawed being contrary to the Act. The subject mark is a combination of three English words forming a tagline/ slogan which is capable of registration as the Act makes no distinction between a word mark and a tagline. Slogan can be adept 'source identifier'. Therefore, the subject mark is inherently distinctive, capable of distinguishing goods and services of the Appellant from others and therefore, impugned order is liable to be set aside.

4. Counsel for Respondent, on the other hand objects to the subject mark and argues that the impugned order calls for no interference as the subject mark is inherently non-distinctive.

5. The Court has considered the aforenoted contentions. The subject mark, is a slogan/ tagline which the Appellant has started using for the services noted above. Appellant already has a registration of the identical mark in United States of America, Canada, European Union and Mexico. That apart, words forming the subject mark "BELIEVING", "IN" and "BETTER", make no reference, direct or indirect, to the services for which the registration is sought. It also does not describe the services being

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offered. Although the aforenoted words are common dictionary words, but when used in conjunction with each other, as a tagline, form a creative and distinct expression. Indeed, slogans or taglines are treated like word marks while processing for registration. Several generic common English words which constitute taglines have been afforded protection under the Act. Although a tagline conveys a simple message, it can also be abstract to the extent it indicates commercial origin of the goods or services.

6. Considering the above, the Court is inclined to allow the present appeal with the following directions:

(a) The impugned order dated 14th June, 2019 is set aside.

(b) Trademark Registry is directed to process application No. 2567324 for the subject mark "BELIEVING IN BETTER" for registration and proceed to advertisement within a period of three months from today.

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

(a) It is clarified that subject mark shall not grant any exclusive rights in the individual words "BELIEVING", "IN" and "BETTER". This disclaimer shall be reflected in a trademark journal at the time of advertisement and also if the subject mark ultimately procced for registration.

7. With the above directions, the appeal is disposed of along with pending application(s), if any.

8. 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 16, 2023/*nk*

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