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

\+ C.A.(COMM.IPD-TM) 124/2022

JOSEPH VOGELE AG ..... Appellant

Through: Mr. Kshitij Saxena and Ms. Rachana Bishnoi, Advocates.

versus

REGISTRAR OF TRADEMARKS ..... 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

% 20.04.2023

1. Appellant – 'Joseph Vögele AG' has filed the instant appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"] impugning order dated 05th March, 2019 read along with Statement of Grounds of decision dated 10th July, 2019 [hereinafter separately "*Refusal Order*" and "*Statement of Grounds*" and collectively "*Impugned Orders*"] whereby Appellant's multi-class Trade Mark Application No. 2567389 for registration of the word mark 'AutoSet Plus' under Classes-07 and 09 [hereinafter "*subject mark*"], has been refused. Reasons supporting the decision elaborated in the Statement of Grounds are as follows:

> "With reference to the above and request on Form TM-M dated 27/05/2019. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 05/03/2019 and the said application is refused on the following Grounds;
>
> *11(1)(a) – Relative grounds for refusal of registration- The said trade Mark

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is refused for registration because of its identify 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 trademark there exists a likelihood of confusion on the part of the public,which includes the likelihood of association with the earlier trademark.

Identical/Similar, valid mark with same classification of goods/services vide app. no. 1309247, 1309248 are already on record. Likelihood of confusion. Mark is filed on proposed to be used basis. Objection under Section (11) sustained. Trademark application is accordingly refused."

2. Subject mark is found objectionable under Section 11 (1)(*a*) and (*b*) of the Act, in view of marks listed in the 'WORD MARK SEARCH REPORT' annexed to the Examination Report, which is culled out below:

LOCATION:
SECTION: EXM
REPORT: EXM007

WORD MARK SEARCH REPORT
APPLICATION NUMBER: 2567389
Class : —
TRADEMARK: 'AutoSet Plus'

USER : RJN
PAGE:1
DATE: 23/01/2015

APPL NO	CLASS	CONFLICTING MARK	JOURNAL No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
GOODS SERVICES							
1309247	7	AUTOset	1398	RIETER INGOLSTADT SPINNEREIMASCHINENBAU AG	FRIEDRICH - EBERT - STRABE - 84, 85055, INGOLSTADT, GERMANY.	Registered	AUTOset

APPLICATION DATE 16/09/2004
14:43:00

GOODS/SERVICE TEXTILE MACHINES AND THEIR PARTS AS WELL AS MACHINES AND MACHANICAL, ELECTRICAL AND ELECTROTECHNICAL DEVICES FOR MAINTENANCE AND OPERATION OF TEXTILE MACHINES; MECHANICAL, ELECTRICAL AND ELECTROTECHNICAL DEVICES OR MACHINES FOR YARN MANUFACTURE, FOR WINDING, ACCEPTING, KEEPING STORAG, TRANSPORTATING, PLACING AND TRANSFERRING TEXTIEL MATERIALS, ESPECIALLY YARNS OR SLIVER (FIBRE BANDS) OR SLUBBING, ON TEXTILE MATERIAL PROCESSING MACHINES, INCLUDING CONTAINERS MADE OF CARDBOARD, PLASTIC OR METAL, IN PARTICULAR SPINNING CANS, AS PARTS OF AFOREMENTIONED MACHINES AND DEVICES; SPINNING BOXES FOR OPEN-END ROTOR SPINNING MACHINES; MULTITUDE OF SPINNING BOXES FOR OPEN-END ROTOR SPINNING MACHINES COMBINED IN A FRAME; NON-WOVEN WEB OPENING ELEMENTS, ROTOR HOUSING AND ROTORS FOR OPEN-END ROTOR SPINNING MACHINES; MACHINES OR MECHANICAL DEVICES FOR INSERTING, REMOVING OR MOUNTING AND CHANGING YARN PACKAGES, BOBBINS, COPS, NON-WOVEN FIBROUS WEBS, WINDINGS OR FABRIC WEBS; BOBBIN CARRIERS, BOBBIN CREELS

2567387	7	AutoSet	JOSEPH VOGELE AG	JOSEPH-VOGELE-STRABE 1, 67067 LUDWIGSHAFEN GERMANY	Marked for Exam

APPLICATION DATE 19/07/2013

GOODS/SERVICE MACHINES FOR CONDITIONING, DISTRIBUTING, SOLIDIFYING ANC FINISHING OF ROAD SURFACES; ROAD FINISHERS, PAVING SCREEDS FOR ROAD FINISHERS; FEEDING VEHICLES; PARTS AND/OR COMPONENTS OF ROAD FINISHERS, PAVING SCREEDS, FEEDING VEHICLES AND/OR MACHINES FOR CONDITIONING, DISTRIBUTING, SOLIDIFYING AND FINISHING OF ROAD SURFACES, IN PARTICULAR LEVELING CYLINDERS, SCREEDS, TAMPERS, PRESSING BARS, AUGERS, MATERIAL DEFLECTORS, HOPPER FRONT FLAPS, SCRAPER BELTS

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921608	9	AUTOSET		PARAMJEET SINGH	G-35-36, GUPTA COMPLEX, INDERLOK, OLD ROHTAK ROAD, DELHI -110 035.	Exam Report Issued

APPLICATION DATE 28/04/2000
15:28:23

GOODS/SERVICE MOTOR STARTER, SWITCHERS, MINIATURE CIRCUIT BREAKERS, CONTRACTORS AND RELAYS

1309248	9	AUTOset	1335	RIETER INGOLSTADT SPINNEREIMASCHINENBAU AG	FRIEDRICH - EBERT - STRABE - 84, 85055, INGOLSTADT, GERMANY.	Registered

APPLICATION DATE 16/09/2004
14:43:00

GOODS/SERVICE ELECTRICAL, OPTICAL, MEASURING, SIGNALLING OR MONITORING DEVICES AND INSTRUMENTS FOR QUALITY INSPECTION, MEASUREMENT, CONTROL MONITORING, REGULATION, OPERATION AND AUTOMATION OF INDIVIDUAL OR SEVERAL WORKING STAGES ON TEXTILE MACHINES, SPINNING MACHINES INCLUDING THEIR TRANSPORT FACILITIES, AFOREMENTIONED PRODUCTS ESPECIALLY FOR ANALYSIS OF TEXTILE MATERIAL (IN AS FAR AS CONTAINED IN CLASS9); DEVICES FOR RECORDING, TRANSMISSION AND REPRODUCTION OR IMAGES AND ANALYSIS RESULTS OF TEXTILE MATERIAL, DEVICES FOR OPERATING DATA ANALYSIS OF TEXTILE MACHINE INSTALLATIONS, ROBOTS FOR YARN INSPECTION, YARN ACCEPTANCE AND YARN PREPARATION ON TEXTILE MACHINES INCLUDED IN CLASS 9.

RAJANI SINGH
For REGISTRAR OF TRADE MARKS

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3. Cited mark at sl. no. 2 – 'AutoSet' (Trade Mark Application No. 2567387) is Appellant's own mark; cited mark at sl. no. 3 – 'AUTOSET' (Trade Mark Application No. 921608), has been abandoned (as reflected on the online portal of the Trade Marks Registry); as regards cited marks at sl. nos. 1 and 4, Appellant has 'no objection'/ letter of consent, from the authorised persons of registered proprietor of the said marks – 'Rieter Ingolstadt GmbH' (annexed as Exhibit A-16 to appeal). In fact, counsel for Appellant has pointed out that in other jurisdictions, Appellant has acquired registrations of identical marks on the basis no objection from the said proprietors, indicating co-existence.

4. Indeed, the subject mark has been registered as a Community Trademark (EU CTM) and has several registrations in multiple jurisdictions including Japan, Russia, Germany, etc. as detailed in paragraph No. 2 of

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appeal.

5. For the foregoing reasons, the present appeal is allowed with following directions:

(i) Impugned Orders is set aside.

(ii) Trade Marks Registry is directed to process the registration application for the subject mark.

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

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

(v) The rights in subject mark shall be restricted to combination of words 'AutoSet Plus', as depicted above.

(vi) It is clarified the subject mark shall not grant any exclusive rights in the word 'Plus', separately or individually. This disclaimer/ condition and limitation shall be reflected in the Trade Marks Journal at the time of advertisement if the subject mark ultimately proceeds for registration.

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

7. 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

APRIL 20, 2023
d.negi
(Corrected and released on: 27th April, 2023)

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