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

\+ C.A.(COMM.IPD-TM) 21/2024, I.A. 7932/2024 I.A. 7933/2024

MANKIND PRIME LABS PRIVATE LIMITED ..... Appellant

Through: Mr. Hemant Daswani, Ms. Saumya Bajpai, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% 08.04.2024

1. This appeal has been filed under Section 91 of Trade Marks Act, 1999 [‘***the Act***’] read with Section 151 of Code of Civil Procedure, 1908 [‘***CPC***’] assailing order dated 04th January 2024, passed by the Associate Manager of Trade Marks rejecting the trademark application no. 4804264 filed by appellant in class 5 for registration of the mark **‘PRIMERELIEF’**.

2. The application was rejected registration under Sections 9(1)(b) and 11(1) of the Act.

3. Counsel for appellant seeks to canvass that the use of the word **‘PRIMERELIEF’** is a unique coinage, and is not descriptive in any manner particularly because of combination of two words **‘PRIME’** and **‘RELIEF’** in this regard.

4. He adverts to decision of the Coordinate Bench of this Court dated 09th December 2022 in ***CA(COMM.IPD-TM) 32/2021*** titled as ***Sidhant Kapur v. Registrar of Trade Marks*** wherein appeal was admitted against rejection of

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application for a mark **'EASYBANDS'** in class 25 for detachable collar for lawyers. Said refusal for registration was done under Section 9(1)(b) of the Act, and this Court, by the above order, admitted the appeal and directed the Registry to process the registration.

5. The decision in ***Sidhant Kapur*** (*supra*) cannot come to the assistance of the appellant since the same was in an entirely different context whereas the use of the word **'RELIEF'** prefixed with any word whatsoever has application to possibly almost all the medicinal and pharmaceutical goods in class 5, since they are essentially and fundamentally *"relief giving"*.

6. A perusal of the impugned order would show that the Registrar's office has taken an apposite ground for rejection of the application under Section 9(1)(b), particularly, since the registration is sought in class 5 which relates to pharmaceutical products.

7. Not only is the threshold required for registration of marks for a pharmaceutical product higher, but also the word **'PRIMERELIEF'** is extremely generic in nature, even though the word **'RELIEF'** is prefixed to the word **'PRIME'**.

8. Moreover, the registration is sought on a '*proposed to be used*' basis and the appellant does not claim any application/user of the mark yet.

9. Allowing the appellant to have registration of such a mark, in the opinion of this Court, would amount to expansive overreach. This may not be acceptable since pharmaceutical goods are otherwise mostly marketed under a particular drug name/derived drug name. Permitting the appellant to register PRIMERELIEF would amount to monopolizing a highly generic mark, which otherwise has resonance for almost all pharmaceutical products

10. In view of the same, present appeal is accordingly dismissed. Pending

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applications are rendered infructuous.

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 8, 2024/RK/sc

Click here to check corrigendum, if any

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