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

\+ C.A.(COMM.IPD-TM) 123/2021

CFA INSTITUTE ..... Appellant

Through: Mr. Karan Singh, Advocate.

versus

DEPUTY 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

% 25.01.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 is directed against Statement of Grounds dated 05th October, 2018 and order dated 29th August, 2018, refusing Appellant's application No. 2680698 for registration of the mark "CHARTERED FINANCIAL ANALYST" in class 9 [*hereinafter*, "***subject mark***"].

2. Grounds for refusal are as under:

> *"With reference to the above and request on Form TM-M dated 14/09/2018. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 13/08/2018 and the said application is refused on the following Grounds;*
>
> ** The applicant advocate Ms. Nidhi Rastogi appeared. I have heard the argument and also perused the documents available on record.*

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Objection under section 9 is sustained, application is refused for registration.
** 9 - Absolute grounds for refusal of registration.*

** 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:*

** 9(1)(b) - The Trade Mark consist exclusively of marks or 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.*
Since the objection raised in the Examination Report under section 9 of the Trade Marks Act, 1999 as mentioned above cannot be waived and Ld. Counsel failed to convince at the time of hearing in proving his/her case, the above mentioned application is refused."

3. The Senior Examiner has objected to the registration stating that subject mark is devoid of distinctiveness and is descriptive of services to which it is applied. It has emerged that Appellant holds registration of an identical mark in the same class under Application No. 791237. Counsel for Appellant draws the Court's attention to judgement dated 04th August, 2006 in ***Association for Investment Management & Research and Anr. v. The Institute of Chartered Financial Analysts of India and Anr.*** wherein, this Court formed a *prima facie* opinion that the subject mark – "CHARTERED FINANCIAL ANALYST" has acquired a secondary meaning and is therefore, distinctive.[1]

4. In view of the above, objections under Section 9 of the Trademarks Act are not sustainable and accordingly, the present appeal is allowed with following directions:

(i) Statement of Grounds dated 05th October, 2018 and order dated 29th August, 2018, are set aside.

[1] 2006 SCC OnLine Del 1673.

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(ii) Trademark Registry is directed to process Appellant's application No. 2680698 for the mark "CHARTERED FINANCIAL ANALYST" in class 9. 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) It is clarified that registration of subject mark shall not vest any exclusive rights in the expression "Financial Analyst". This disclaimer shall be reflected at the time of advertisement of subject mark and also if 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 Trademark Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

JANUARY 25, 2023
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