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

\+ C.A.(COMM.IPD-TM) 36/2022

S AND P GLOBAL INC. ..... Appellant

Through: Mr. Abhimanyu Kumar and Ms. Sunidhi Bansal, Advocates.

versus

THE REGISTRAR OF TRADEMARK ..... 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**

**% 17.04.2023**

1. Appellant – 'S&P Global Inc.' (*formerly* McGraw Hill Financial, Inc.) has filed the present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"] impugning Refusal Order dated 28th December, 2018 read along with Statement of Grounds of decision dated 21st February, 2019, whereby Appellant's multi-class Trade Mark Application No. 2442103 for the word mark 'Essential Intelligence' under Classes-09, 16, 35, 36, 40 and 41 [hereinafter "*subject mark*"], has been refused [hereinafter collectively "*Impugned Orders*" and separately "*Refusal Order*" and "*Statement of Grounds*"]. Reasons disclosed in Statement of Grounds are as follows:

> "With reference to the above and request on Form TM-M dated 25/01/2019. It has been decided by the Register of Trade Marks to inform you that hearing in respect of above application was held on 06/12/2018 and the said application is refused on the



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following Grounds;

> * SEC 9/11 OBJECTION HENCE REFUSED. THE MARK IS LAUDATORY, OBJECTION UNDER SECTION 9(1)b OF THE ACT
> *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.
> SEC 9/11 OBJECTION HENCE REFUSED. THE MARK IS LAUDATORY, OBJECTION UNDER SECTION 9(1) OF THE ACT"

2. The Senior Examiner has objected to registration of the subject mark under Section 9 (1)(*a*) and (*b*) as well as Section 11 of the Act. He found the subject mark to be laudatory, however, in the opinion of the Court, the two English dictionary words 'Essential' and 'Intelligence', when used in conjunction with services rendered by the Appellant, do not directly describe a positive quality thereof. The phrase only hints or suggests the intended nature of the goods or services, without actually describing them. The phrase 'Essential Intelligence', at the highest, can be considered to be suggestive even though it has the potential of being commendatory. Further, an identical mark has been registered in favour of Appellant in several other jurisdictions including WIPO, United States of America, Singapore, Argentina, Canada, etc., details whereof are set out in paragraph No. VI (i)(b) of the appeal.

3. Besides that, Appellant has also filed a user affidavit disclosing that subject mark has been in use in India since the year-2013 and has since acquired considerable reputation on account of its use. In view of the above, in the opinion of the Court, the objection under Section 9 (1)(*a*) and (*b*) of the Act is not sustained.



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4. As regards objection under Section 11 of the Act, one needs to first take note of similar cited marks in the 'WORD MARK SEARCH REPORT' annexed to the Examination Report, which is extracted as under:

GOVERNMENT OF INDIA
TRADE MARKS REGISTRY

INTELLECTUAL PROPERTY INDIA

LOCATION:
SECTION: EXM
REPORT: EXM007

WORD MARK SEARCH REPORT
APPLICATION NUMBER: 2442103
Class : ---
TRADEMARK: 'ESSENTIAL INTELLIGENCE'

USER : RJN
PAGE:1
DATE: 01/03/2013

| APPL NO | CLASS | CONFLICTING MARK | JOURNAL No | PROPRIETOR NAME | PROPRIETOR ADDRESS | STATUS | TM IMAGE |
|---|---|---|---|---|---|---|---|
| GOODS SERVICES | | | | | | | |
| 1186274 | 9 | ESSENTIALS | 1374 | EMEL IMPEX PVT. LTD. | 1, CHURCHGATE MANSION, SITARAM DEORA MARG, CHURCHGATE, MUMBAI - 400 020. | Registered | |

APPLICATION DATE 27/03/2003
12:23:00

GOODS/SERVICE SCIENTIFIC, NAUTICAL, SURVEYING APPARATUS, ELECTRICAL AND ELECTRONIC INSTRUMENTS AND APPLIANCES (INCLUDING WIRELESS), TELEVISION SETS, ELECTRONIC RECORDING AND REPALYING INSTRUMENTS, MUSIC SYSTEM, COMPACT DISCS, FLOPPY DISCS, FACSMILE MACHINES, COMPUTERS AND COMPUTER RELATED ACCESSORIES, PRINTERS, PHOTOGRAPHIC, CINEMATOGRAPHIC, OPTICAL WEIGHING, MEASURING, SIGNALLING, CHECKING (SUPERVISION), LIFE SAVING AND TEACHING APPARATUS AND INSTRUMENTS, COIN OR COUNTER FREED APPARATUS, TALKING MACHINES, CHASH REGISTERS, CALCULATING MACHINES, FIRE EXTINGUISHING APPARATUS APPARAUS AND ALL GOODS INCLUDED IN CLASS 9.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1534825 | 9 | ESSENTIAL (LABEL) | 1399 | JOBSTREET.COM SDN BHD. | LEVEL 7, SETIA 1, 15 LORONG DUNGUN, DAMANSARA HEIGHTS, 50490 KUALA LUMPUR, MALAYSIA | Registered | |

APPLICATION DATE 27/02/2007
12:32:00

GOODS/SERVICE COMMUNICATION AND TELECOMMUNICATION APPARATUS AND INSTRUMENTS, PDA (PERSONAL DIGITAL ASSISTANCE) COMPUTERS, COMPUTER SEARCH ENGINE SOFTWARE, COMPUTER SOFTWARE DOWNLOADABLE FROM A GLOBAL COMPUTER NETWORK, ELECTRONIC PUBLICATION (DOWNLOADABLE) PROVIDED ON-LINE FROM DATABASE OR A GLOBAL COMPUTER NETWORK, DIGITAL MUSIC (DOWNLOADABLE) PROVIDED FROM A GLOBAL COMPUTER NETWORK, AMUSEMENT APPARATUS AND APPARATUS FOR ELECTRONIC GAMES ADAPTED FOR USE WITH TELEVISION RECEIVERS ONLY, INCLUDING THOSE WHICH CAN COMMUNICATE WITH ONE ANOTHER VIA TELECOMMUNICATION NETWORK.

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|---|---|---|---|---|---|---|---|
| 1534831 | 16 | ESSENTIAL (LABEL) | 1399 | JOBSTREET.COM SDN BHD. | LEVEL 7, SETIA 1, 15 LORONG DUNGUN, DAMANSARA HEIGHTS, 50490 KUALA LUMPUR, MALAYSIA | Registered | |

APPLICATION DATE 27/02/2007
12:32:00

GOODS/SERVICE PAPER CARDBOARD & GOODS MADE FROM THESE MATERIALS, ADVERTISING MATERIALS FOR DISSEMINATION IN CARD FORM, PAPER FORM AND PLASTICS FROM, ADVERTISING MATERIAL FOR CARDBOARD, ADVERTISING MATERIALS OF PAPER, PRINTED MATERIALS FOR ADVERTISING PURPOSES ADVERTISEMENT DISPLAY BOARDS OF PAPER, ADVERTISING MATERIALS OF PAPER ADVERTISEMENT SIGNS OF PAPER, PRINTED MATTER, STATIONERY, PHOTOGRAPHS PRINTERS TYPE PRINTING BLOCKS ALL INCLUDED IN CLASS 16.

| | | | | | | |
|---|---|---|---|---|---|---|
| 2442103 | 16 | ESSENTIAL INTELLIGENCE | THE MCGRAW-HILL COMPANIES, INC. | 1221 AVENUE OF THE AMERICAS, NEW YORK NY 10020 USA | Marked for Exam | |

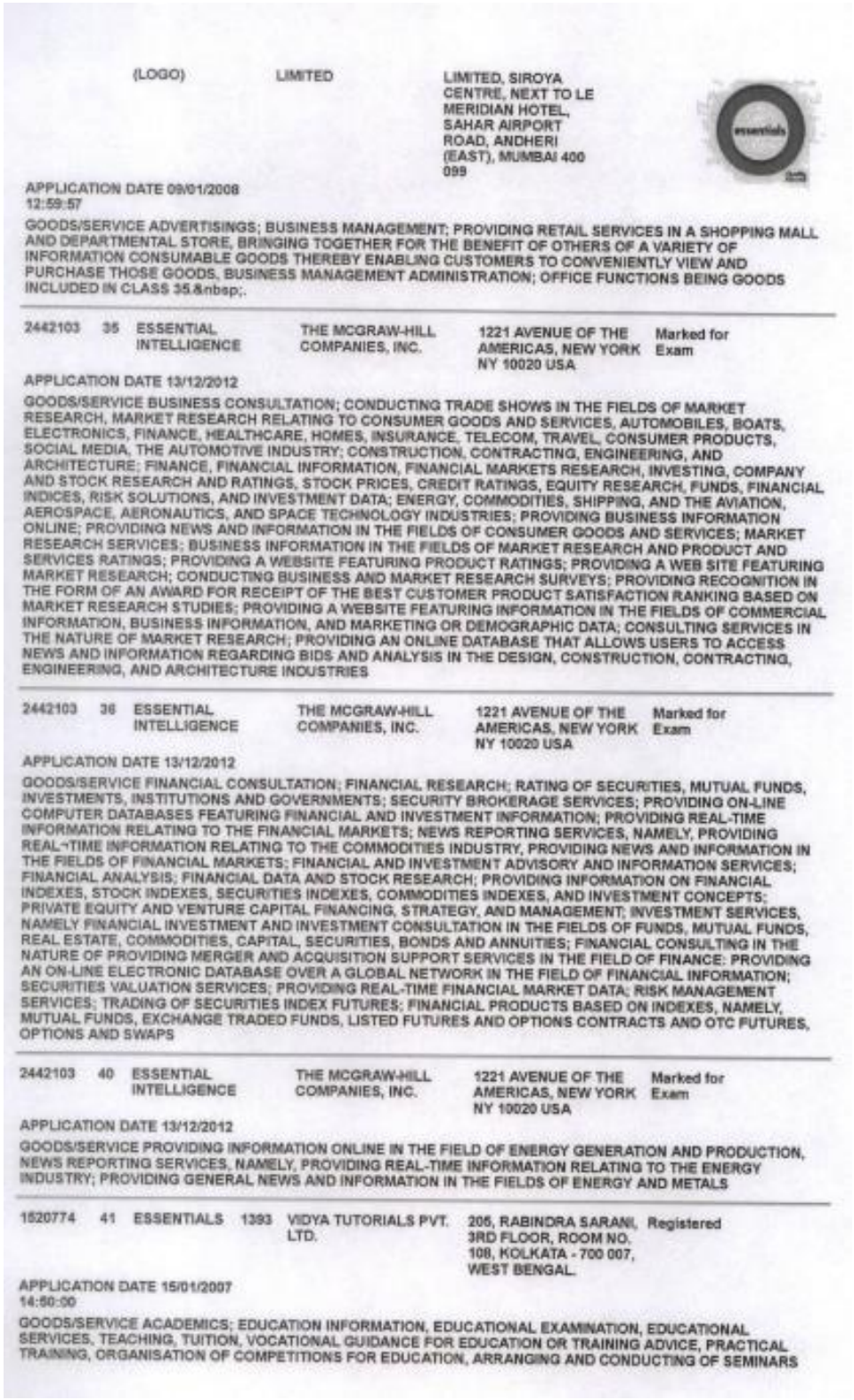
APPLICATION DATE 13/12/2012

GOODS/SERVICE TRADE PUBLICATIONS, PAMPHLETS, BROCHURES, AND NEWSLETTERS IN THE FIELDS OF MARKET RESEARCH, MARKET RESEARCH RELATING TO CONSUMER GOODS AND SERVICES, AUTOMOBILES, BOATS, ELECTRONICS, FINANCE, HEALTHCARE, HOMES, INSURANCE, TELECOM, TRAVEL, CONSUMER PRODUCTS, SOCIAL MEDIA, THE AUTOMOTIVE INDUSTRJ"; CONSTRUCTION, CONTRACTING, ENGINEERING, AND ARCHITECTURE; FINANCE, FINANCIAL INFORMATION, FINANCIAL MARKETS RESEARCH, INVESTING, COMPANY AND STOCK RESEARCH AND RATINGS, STOCK PRICES, CREDIT RATINGS, EQUITY RESEARCH, FUNDS, FINANCIAL INDICES, RISK SOLUTIONS, AND INVESTMENT DATA; ENERGY, COMMODITIES, SHIPPING, AND THE AVIATION, AEROSPACE, AERONAUTICS, AND SPACE TECHNOLOGY INDUSTRIES

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|---|---|---|---|---|---|---|
| 1639603 | 35 | ESSENTIALS | 1402 | ADITYA BIRLA RETAIL | ADITYA BIRLA RETAIL | Registered |



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(LOGO) LIMITED

LIMITED, SIROYA CENTRE, NEXT TO LE MERIDIAN HOTEL, SAHAR AIRPORT ROAD, ANDHERI (EAST), MUMBAI 400 099

APPLICATION DATE 09/01/2008 12:59:57

GOODS/SERVICE ADVERTISINGS; BUSINESS MANAGEMENT; PROVIDING RETAIL SERVICES IN A SHOPPING MALL AND DEPARTMENTAL STORE, BRINGING TOGETHER FOR THE BENEFIT OF OTHERS OF A VARIETY OF INFORMATION CONSUMABLE GOODS THEREBY ENABLING CUSTOMERS TO CONVENIENTLY VIEW AND PURCHASE THOSE GOODS, BUSINESS MANAGEMENT ADMINISTRATION; OFFICE FUNCTIONS BEING GOODS INCLUDED IN CLASS 35. .

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|---|---|---|---|---|---|
| 2442103 | 35 | ESSENTIAL INTELLIGENCE | THE MCGRAW-HILL COMPANIES, INC. | 1221 AVENUE OF THE AMERICAS, NEW YORK NY 10020 USA | Marked for Exam |

APPLICATION DATE 13/12/2012

GOODS/SERVICE BUSINESS CONSULTATION; CONDUCTING TRADE SHOWS IN THE FIELDS OF MARKET RESEARCH, MARKET RESEARCH RELATING TO CONSUMER GOODS AND SERVICES, AUTOMOBILES, BOATS, ELECTRONICS, FINANCE, HEALTHCARE, HOMES, INSURANCE, TELECOM, TRAVEL, CONSUMER PRODUCTS, SOCIAL MEDIA, THE AUTOMOTIVE INDUSTRY; CONSTRUCTION, CONTRACTING, ENGINEERING, AND ARCHITECTURE; FINANCE, FINANCIAL INFORMATION, FINANCIAL MARKETS RESEARCH, INVESTING, COMPANY AND STOCK RESEARCH AND RATINGS, STOCK PRICES, CREDIT RATINGS, EQUITY RESEARCH, FUNDS, FINANCIAL INDICES, RISK SOLUTIONS, AND INVESTMENT DATA; ENERGY, COMMODITIES, SHIPPING, AND THE AVIATION, AEROSPACE, AERONAUTICS, AND SPACE TECHNOLOGY INDUSTRIES; PROVIDING BUSINESS INFORMATION ONLINE; PROVIDING NEWS AND INFORMATION IN THE FIELDS OF CONSUMER GOODS AND SERVICES; MARKET RESEARCH SERVICES; BUSINESS INFORMATION IN THE FIELDS OF MARKET RESEARCH AND PRODUCT AND SERVICES RATINGS; PROVIDING A WEBSITE FEATURING PRODUCT RATINGS; PROVIDING A WEB SITE FEATURING MARKET RESEARCH; CONDUCTING BUSINESS AND MARKET RESEARCH SURVEYS; PROVIDING RECOGNITION IN THE FORM OF AN AWARD FOR RECEIPT OF THE BEST CUSTOMER PRODUCT SATISFACTION RANKING BASED ON MARKET RESEARCH STUDIES; PROVIDING A WEBSITE FEATURING INFORMATION IN THE FIELDS OF COMMERCIAL INFORMATION, BUSINESS INFORMATION, AND MARKETING OR DEMOGRAPHIC DATA; CONSULTING SERVICES IN THE NATURE OF MARKET RESEARCH; PROVIDING AN ONLINE DATABASE THAT ALLOWS USERS TO ACCESS NEWS AND INFORMATION REGARDING BIDS AND ANALYSIS IN THE DESIGN, CONSTRUCTION, CONTRACTING, ENGINEERING, AND ARCHITECTURE INDUSTRIES

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| 2442103 | 36 | ESSENTIAL INTELLIGENCE | THE MCGRAW-HILL COMPANIES, INC. | 1221 AVENUE OF THE AMERICAS, NEW YORK NY 10020 USA | Marked for Exam |

APPLICATION DATE 13/12/2012

GOODS/SERVICE FINANCIAL CONSULTATION; FINANCIAL RESEARCH; RATING OF SECURITIES, MUTUAL FUNDS, INVESTMENTS, INSTITUTIONS AND GOVERNMENTS; SECURITY BROKERAGE SERVICES; PROVIDING ON-LINE COMPUTER DATABASES FEATURING FINANCIAL AND INVESTMENT INFORMATION; PROVIDING REAL-TIME INFORMATION RELATING TO THE FINANCIAL MARKETS; NEWS REPORTING SERVICES, NAMELY, PROVIDING REAL-TIME INFORMATION RELATING TO THE COMMODITIES INDUSTRY, PROVIDING NEWS AND INFORMATION IN THE FIELDS OF FINANCIAL MARKETS; FINANCIAL AND INVESTMENT ADVISORY AND INFORMATION SERVICES; FINANCIAL ANALYSIS; FINANCIAL DATA AND STOCK RESEARCH; PROVIDING INFORMATION ON FINANCIAL INDEXES, STOCK INDEXES, SECURITIES INDEXES, COMMODITIES INDEXES, AND INVESTMENT CONCEPTS; PRIVATE EQUITY AND VENTURE CAPITAL FINANCING, STRATEGY, AND MANAGEMENT; INVESTMENT SERVICES, NAMELY FINANCIAL INVESTMENT AND INVESTMENT CONSULTATION IN THE FIELDS OF FUNDS, MUTUAL FUNDS, REAL ESTATE, COMMODITIES, CAPITAL, SECURITIES, BONDS AND ANNUITIES; FINANCIAL CONSULTING IN THE NATURE OF PROVIDING MERGER AND ACQUISITION SUPPORT SERVICES IN THE FIELD OF FINANCE; PROVIDING AN ON-LINE ELECTRONIC DATABASE OVER A GLOBAL NETWORK IN THE FIELD OF FINANCIAL INFORMATION; SECURITIES VALUATION SERVICES; PROVIDING REAL-TIME FINANCIAL MARKET DATA; RISK MANAGEMENT SERVICES; TRADING OF SECURITIES INDEX FUTURES; FINANCIAL PRODUCTS BASED ON INDEXES, NAMELY, MUTUAL FUNDS, EXCHANGE TRADED FUNDS, LISTED FUTURES AND OPTIONS CONTRACTS AND OTC FUTURES, OPTIONS AND SWAPS

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| 2442103 | 40 | ESSENTIAL INTELLIGENCE | THE MCGRAW-HILL COMPANIES, INC. | 1221 AVENUE OF THE AMERICAS, NEW YORK NY 10020 USA | Marked for Exam |

APPLICATION DATE 13/12/2012

GOODS/SERVICE PROVIDING INFORMATION ONLINE IN THE FIELD OF ENERGY GENERATION AND PRODUCTION, NEWS REPORTING SERVICES, NAMELY, PROVIDING REAL-TIME INFORMATION RELATING TO THE ENERGY INDUSTRY; PROVIDING GENERAL NEWS AND INFORMATION IN THE FIELDS OF ENERGY AND METALS

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|---|---|---|---|---|---|---|
| 1520774 | 41 | ESSENTIALS | 1393 | VIDYA TUTORIALS PVT. LTD. | 205, RABINDRA SARANI, 3RD FLOOR, ROOM NO. 108, KOLKATA - 700 007, WEST BENGAL. | Registered |

APPLICATION DATE 15/01/2007 14:50:00

GOODS/SERVICE ACADEMICS; EDUCATION INFORMATION, EDUCATIONAL EXAMINATION, EDUCATIONAL SERVICES, TEACHING, TUITION, VOCATIONAL GUIDANCE FOR EDUCATION OR TRAINING ADVICE, PRACTICAL TRAINING, ORGANISATION OF COMPETITIONS FOR EDUCATION, ARRANGING AND CONDUCTING OF SEMINARS



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AND WORKSHOPS, PUBLICATION OF BOOKS, PUBLICATION OF ELECTRONIC BOOKS AND JOURNALS ON LINE, PUBLICATION OF TEXTS.

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| 2442103 | 41 | ESSENTIAL INTELLIGENCE | THE MCGRAW-HILL COMPANIES, INC. | 1221 AVENUE OF THE AMERICAS, NEW YORK NY 10020 USA | Marked for Exam |

APPLICATION DATE 13/12/2012

GOODS/SERVICE ARRANGING AND CONDUCTING EDUCATIONAL CONFERENCES, WORKSHOPS, AND EXHIBITIONS RELATING TO MARKET RESEARCH, MARKET RESEARCH RELATING TO CONSUMER GOODS AND SERVICES, AUTOMOBILES, BOATS, ELECTRONICS, FINANCE, HEALTHCARE, HOMES, INSURANCE, TELECOM, TRAVEL, CONSUMER PRODUCTS, SOCIAL MEDIA, THE AUTOMOTIVE INDUSTRY; CONSTRUCTION, CONTRACFING, ENGINEERING, AND ARCHITECTURE; FINANCE, FINANCIAL INFORMATION, FINANCIAL MARKETS RESEARCH, INVESTING, COMPANY AND STOCK RESEARCH AND RATINGS, STOCK PRICES, CREDIT RATINGS, EQUITY RESEARCH, FUNDS, FMANCIAI INDICES, RISK SOLUTIONS, AND INVESTMENT DATA; ENERGY, COMMODITIES, SHIPPING, AND THE AVIATION, AEROSPACE, AERONAUTICS, AND SPACE TECHNOLOGY INDUSTRIES; CONDUCTING AWARDS PROGRAMS PROVIDING INCENTIVES TO PEOPLE, BUSINESS ENTITIES AND ORGANIZATIONS TO DEMONSTRATE EXCELLENCE IN A VARIETY OF FIELDS THROUGH THE ISSUANCE OF AWARDS; PROVIDING A WEB SITE CONTAINING NON-DOWNLOADABLE MATERIALS IN THE SUBJECTS OF MARKET RESEARCH, MARKET RESEARCH RELAFING TO CONSUMER GOODS AND SERVICES, AUTOMOBILES, BOATS, ELECTRONICS, FINANCE, HEALTHCARE, HOMES, INSURANCE, TELECOM, TRAVEL, CONSUMER PRODUCTS, SOCIAL MEDIA, THE AUTOMOTIVE INDUSTRY; CONSTRUCTION, CONTRACTING, ENGINEERING, AND ARCHITECTURE; FINANCE, FINANCIAL INFORMATION, FINANCIAL MARKETS RESEARCH, INVESTING, COMPANY AND STOCK RESEARCH AND RATINGS, STOCK PRICES, CREDIT RATINGS, EQUITY RESEARCH, FUNDS, FMANCIAI INDICES, RISK SOLUTIONS, AND INVESTMENT DATA: ENERGY, COMMODITIES, SHIPPING, AND THE AVIATION, AEROSPACE, AERONAUTICS, AND SPACE TECHNOLOGY INDUSTRIES

RAJANI SINGH
For REGISTRAR OF TRADE MARKS

Exit Print

5. The current status of the aforenoted cited marks is given hereinbelow:

5.1. Cited mark at sl. no. 1 – Trade Mark Application No. 1186274 has since been removed.

5.2. Cited marks at sl. nos. 2, 3 and 9 – Trade Mark Application Nos. 1534825, 1534831, 1520774 are likely to be removed due to non-filing of renewal request within prescribe timelines.

5.3. Cited marks at sl. nos. 4, 6 to 8 and 10 – Trade Mark Application No. 2442103, under different classes, are marks of the Appellant itself.

Apart from the above, cited device mark at sl. no. 5 i.e., Trade Mark Application No. 1639603 – ‘ ’, *prima facie*, appears to be dissimilar when compared with the subject word mark – ‘Essential Intelligence’, as a whole. Thus, objection under Section 11 of the Act is also



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devoid of merit.

6. In view of the above, the present appeal is allowed with following directions:

6.1. Impugned Orders are set aside.

6.2. Trade Marks Registry is directed to process the registration application for the subject mark.

6.3. Subject mark be advertised within a period of three months from today.

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

6.5. The rights in subject mark shall be restricted to combination of words 'Essential' and 'Intelligence', as depicted above.

6.6. It is clarified the subject mark shall not grant any exclusive rights in the words 'Essential' or 'Intelligence,' 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.

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 Trade Marks Registry at llc-ipo@gov.in for compliance.

**SANJEEV NARULA, J**

**APRIL 17, 2023**/*d.negi*
(Corrected and released on: 24th April, 2023)



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