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

\+ C.A.(COMM.IPD-TM) 106/2021

ASEEM SOOD ..... Appellant

Through: Mr. Gaurav Miglani and Ms. Shivika Chaudhary, Advocates.

versus

THE 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

% 15.03.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999 is directed against order dated 20th November, 2018 read along with Statement of Grounds of Decision dated 29th December, 2018, both passed by Senior Examiner of Trademarks, whereby Appellant's trademark application No. 2558440 for device/ label "

" in class 03 for cosmetic items [*hereinafter*, ***'subject mark'*],** has been refused registration.

2. The grounds for refusal are as follows:

> *"ADV. KAPIL APPEARED, ARGUED/MADE SUBMISSION, HEARD CHECKED APPLICATION, REPLY TO EXAMINATION REPORT, IT APPEARED THAT, REPLY IS NOT SATISFACTORY AS TO EXAMINATION REPORT, REGISTERED/PENDING SIMILAR CITED MARK WITH SAME GOODS IS ON RECORD, MARK IS NOT DISTINCTIVE AND*

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DESCRIPTIVE IN NATURE SO OBJ. U/S 9 SUSTAIN, THE USER IS INSUFFICIENT TO PROVE THE DISTINCTIVENESS, HENCE REFUSED.
** 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 sevice or other characteristics of the goods or services.*
** 11(1)(a) - Relative grounds for refusal of registration- The said trade Mark is refused for registration because of its identity with an earlier trade mark and similarity of goods or services covered by the trade mark"*

3. Mr. Gaurav Miglani, counsel for Appellant, argues that objections under Section 9(1)(a) and (b) and 11 of the Trademarks Act, 1999 are not sustainable for the following reasons:

3.1. The subject mark is a unique combination of three words – "COLOR", "CARE" and "LONDON" written in a stylized manner, which makes it inherently distinctive. Appellant's claim does not pertain to exclusivity over any individual word constituting the subject mark; rather, the subject mark should be considered as a whole.

3.2. Subject mark has acquired distinctiveness owing to its continuous use since 2013 and is therefore, capable of functioning as a trademark.

3.3. There are several other marks registered in class 03, using the word "COLOR" as a prefix and hence, objection of non-descriptiveness is misconceived.

3.4. As regards objection under Section 11 of the Trademarks Act, he stresses that since the similarity with the cited marks in the Examination Report lies in the word "LONDON", Appellant is prepared to remove this word and modify the subject mark

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accordingly. He has handed over a copy of the modified subject mark *i.e.*, "

". Representation of the new mark is taken on record.

4. In the opinion of the Court, considering the continuous use of the subject mark demonstrated from the material placed on record, there is some basis for Appellant to claim that subject mark has acquired some distinctiveness. The word "COLORCARE" is not a dictionary word and appears to be a combination of two distinct words – "COLOR" and "CARE". When combined, they suggest a brand, product, or service related to care or maintenance of colors which at best, can be considered to be suggestive for cosmetic goods. Further, these words are written in a stylistic manner, which can set the subject mark apart from other similar names or brands in the market. The objection pertaining to the similarity also does not survive as the Appellant has removed "LONDON" from the subject mark.

5. In view of the above, Appellant's application can proceed to the stage of advertisement without acceptance. It is clarified that the Court has not accepted the new device mark, but only allowed it to be advertised under Section 20 of Trademarks Act.

6. Accordingly, present appeal is allowed with following directions:

6.1. The order dated 20th November, 2018 along with Statement of Grounds of Decision dated 29th December, 2018, are set-aside.

6.2. As agreed by the counsel for Appellant, the mark "

" bearing application No. 2558440 in class 03 is

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replaced with "". The necessary forms for the said purpose shall be filed within a period of six weeks from the date of release of the order.

6.3. Trademarks Registry is directed to process the registration application for the modified mark, as noted above.

6.4. The modified mark be advertised without acceptance as per proviso of Section 20 of the Act, within a period of three months from date of release of this order.

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

6.6. The rights in new mark shall be restricted to combination of words "COLOR" and "CARE"', as depicted above. It is clarified that in the event the new mark is registered, it shall not be granted any exclusive rights in the words "COLOR" or "CARE", separately or individually. This disclaimer shall be reflected in the Trademarks Journal at the time of advertisement as also if the new mark ultimately proceeds for registration.

7. With the above directions, appeal is disposed of.

8. Registry is directed to supply a copy of the present order to the Trademarks Registry at llc-ipo@gov.in for compliance.

SANJEEV NARULA, J

MARCH 15, 2023
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(*Corrected and released on 29th March, 2023*)

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