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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

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MR.JUSTICE N.SESHASAYEE

(T)CMA(TM)78/2023
(OA/5/2020/TM/CHN)

Chennai Race Coaching Institute Private Limited
(Registered under the Indian Companies Act, 1956)
Rep. by its Managing Director Mr.Bharath Seeman
No.1, South Usman Road
T.Nagar, Chennai 600 017 ... Appellant

Vs.

1.The Registrar of Trade Marks
The Trade Marks Registry
IP Office Building
G.S.T. Road, Guindy
Chennai 600 032

2.The Examiner of Trade Marks
The Trade Marks Registry
IP Office Building
G.S.T. Road, Guindy
Chennai 600 032 ... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying (a) set aside the impugned order of the second respondent passed for the mark 'SUPER

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BATCH' in Trade Mark application No.3705773 under class 41 in order dated 28 June, 2019 and statement of grounds of decision dated 17 September, 2019 and to direct the respondent to register the mark.

For Appellant : M/s.S.Dhivya & Aishwarya S.Nathan
for Mr.K.Harishankar

For Respondents : Mr.R.Rajesh Vivekananthan
DSG

JUDGMENT

The appellant herein challenges the order of the respondents dated 28.06.2019, by which the appellant's application for registering its word mark 'SUPER BATCH' was rejected under Section 9(1)(a) and 9(1)(b).

2.The appellant is doing a business in the service sector and has been coaching and preparing students for various competitive examinations. On 19.12.2017, it applied for registering its word mark 'SUPER BATCH', by which name it wanted its business to be known to the world. This however, was refused by the Registrar on the grounds already indicated.

3.The learned counsel for the appellant submitted that the word 'SUPER'

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and 'BATCH' may be common English words, but a Trade Mark may have to be understood in its totality. In other words, the entire phrase 'SUPER BATCH' must be read as one single Trade Mark and it cannot be dissected the way the Registrar appears to have attempted. Placing reliance on the decision of the learned single Judge of this Court in ***Srinivasa Rao vs Senior Examiner of Trade Marks*** [(T)CMA(TM)94/2023] dated 19.10.2023 and ***M/s.Craftsman Automation Pvt. Ltd. vs The Assistant Registrar of Trade Marks and another*** [(T)CMA(TM)48/2023] dated 19.10.2023, the learned counsel said mere use of common words in English by itself cannot be a ground to reject registration.

4.Per contra, the learned counsel for the respondents submitted that in terms of the ratio laid down in ***Institute of Directors vs Worlddevcorp Technology and Business Solutions Pvt. Ltd. and others [(2023) SCC Online Del 7841]***, the appellant cannot claim exclusive right over the words 'SUPER' or 'BATCH'.

5.In ***M/s.Craftsman Automation Pvt. Ltd., vs The Assistant Registrar of***

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Trade Marks and another, the learned single Judge of this Court has held:

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*8. Section 9 of the Trade Marks Act prohibits the registration of trade marks which are devoid of distinctive character or which are used exclusively in trade to designate the kind, quality, intended purpose, geographical origin, etc., of the relevant goods or services. These requirements are also subject to the exception that distinctiveness may either be inherent or acquired. The determination of distinctiveness cannot be undertaken in a vacuum and should be undertaken with reference to the relevant goods or services. While making such determination, it should be borne in mind that the spectrum of distinctiveness is not cast-in-iron and the determination has to be made by examining the mark as a whole. In this case, the mark www.craftsmanautomation.com is applied in relation to machines and machine tools, motors and engines and related tools. The trade mark is not directly or plainly descriptive of the goods and combines the words "craftsman" and "automation" which are not typically combined. As held in Procter & Gamble [**Procter and Gamble Company vs Office for Harmonisation in the Internet Market, (2002) R.P.C. 17 369**] by the European Court of Justice, even*

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an unusual juxtaposition of words commonly used in the English language may qualify as distinctive. In the facts and circumstances, when viewed as a whole, the mark satisfies the requirements of distinctiveness.

6. In ***Srinivasa Rao vs Senior Examiner of Trade Mark***, the learned single Judge has given his opinion as under:

.....

7. The conclusion in the impugned order that the word mark 'DAILYFARM' is descriptive cannot be brushed aside as totally devoid of merit. At the same time, it should be recognized that the appellant has used the words 'DAILYFARM', as part of its device mark, since 2016 and these words are not directly descriptive of the goods, such as green peas, grated coconut or garlic paste, in relation to which the mark is used. The appellant has also obtained registration of the word mark 'DAILYFARM' in Class 35. The Registrar of Trade Marks has not raised any objections under Section 11 of the Trade Marks Act by citing conflicting marks.

7. Seen in the backdrop of the aforesaid authoritative pronouncements, this Court may have to hold that the appellant has made out a case for

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registering its Trade Mark. Having stated thus, this Court also hastens to add that the appellant may not have exclusive right or monopoly vis-a-vis the use of the words 'SUPER' or 'BATCH' separately. To this extent this Court agrees with the submissions made by the learned counsel for the respondent.

8.This appeal stands allowed accordingly. The respondents are directed to register the appellant's Trade Mark, but with a condition that the appellant may not have any monopoly over the use of the words 'SUPER' and / or 'BATCH'. There is no order as to costs.

28.03.2024

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Index : Yes / No
Neutral Citation

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