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

\+ C.A.(COMM.IPD-TM) 56/2022

KENTUCKY FRIED CHICKEN
INTERNATIONAL HOLDINGS LLC ..... Appellant

Through: Mr. Prithvi Singh and Mr. Rohan Krishna Seth, 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 Paaikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 07.02.2023

1. The present appeal under Section 91 of the Trade Marks Act, 1999, [*hereinafter* "*the Act*"] impugns order dated 24th December, 2018, read with Statement of Grounds of decision dated 31st December, 2018, both passed by Senior Examiner of Trademarks, whereby Appellant's application No. 2747482 for the mark "CHICKEN ZINGER" in class 29, has been refused. Relevant portion of the Statement of Grounds of decision reads as under:

> *"With reference to the above and request on Form TM-M dated 26/12/2018. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 24/12/2018 and the said application is refused on the following Grounds:*
>
> ** ADV. NIKHIL APPEARED.ARGUED/MADE SUBMISSION, HEARD*

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CHECKED APPLICATION, REPLY TO EXAMINATION REPORT. IT APPEARED THAT.MARK HAS DIRECT REFERENCE TO THE GOODS. THE USER AFFIDAVIT ALONG WITH EVIDENCE (LIKEWISE; INVOICES, PUBLISHING MATERIAL) IN SUPPORT DOES NOT FILED, FURTHERMORE MARK IS NOT DISTINCTIVE BUT DESCRIPTIVE IN NATURE SO OBJ.U/S 9 SUSTAIN.HENCE REFUSED.

** 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.*"

2. Holding the mark "CHICKEN ZINGER" to be descriptive of characteristics of the goods or services to which it is applied, Senior Examiner has refused its registration under Section 9(1)(b) of the Act.

3. The Court has heard the counsel. Appellant has several registrations in its favour, which have been listed in the appeal as follows:

Trademark	Application No.	Application Date	Class	Status
ZINGER	579523	August 19, 1992	29	Registered
ZINGER	1592639	May 29, 2008	30	Registered
	1999359	July 27, 2010	29	Registered
	2000293	July 28, 2010	30	Registered
	2106141	February 25, 2011	30	Registered
HOT ZINGER	2106142	February 25, 2011	30	Registered
CHICKEN ZINGER	2747483	May 30, 2014	30	Registered
PANEER ZINGER	2747484	May 30, 2014	29	Registered
PANEER ZINGER	2747485	May 30, 2014	30	Registered

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ZINGER FESTIVAL	2811788	September 18, 2014	30	Registered
ZINGER FESTIVAL	2811789	September 18, 2014	29	Registered
	2811790	September 18, 2014	30	Registered
	2811791	September 18, 2014	29	Registered

4. At the time of filing of the appeal, status of application Nos. 2747483, 2747484 and 2747485 was "accepted and advertised", and current status, as mentioned above, is a subsequent development, during the pendency of the present appeal. Proof of current status from the website of Trademark Registry has been handed over and is taken on record.

5. Subject mark comprises of two words – "CHICKEN" and "ZINGER". The dictionary meaning of "ZINGER" is "*a thing outstandingly good of its kind*" or "*a wisecrack; punch line*" or "*a surprise question; an unexpected turn of events*".[1] Use of "ZINGER" in conjunction with "CHICKEN" does not draw an instant connection with the kind of goods/ services and may at best, be considered suggestive. Further, Appellant holds registration of the word marks "ZINGER" and "PANEER ZINGER" in class 29 itself. Objection under Section 9(1)(b) of the Act seems to be based on the use of the word "CHICKEN", over which, Appellant cannot have any exclusivity and no such claim is being asserted. For the foregoing reasons, present appeal is allowed with following directions:

(i) Impugned order dated 24th December, 2018, read with Statement of

[1] *Zinger, Shorter Oxford English Dictionary*, (5th edition, 2002).

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Grounds of decision dated 31st December, 2018 is set aside.

(ii) Trademark Registry is directed to proceed for advertisement of Application No. 2747482 for the mark "CHICKEN ZINGER" in class 29, within a period of three months from today.

(iii) If there is any opposition to the said application, the same shall be decided on its own merits uninfluenced by observations made hereinabove.

(iv) It is clarified that Appellant shall not have any exclusive rights in the word "CHICKEN". Trademarks Registry shall reflect this disclaimer at the time of advertisement of subject mark and also if subject mark ultimately proceeds for registration.

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

7. 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

FEBRUARY 7, 2023
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