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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.12.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

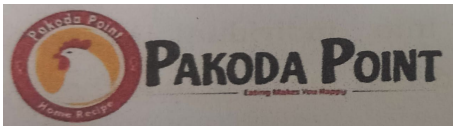
CMA (TM) No.17 of 2024

Leelarani Selvaraju,
5/822-A Treasury Colony,
Collectorate Post,
Dharmapuri - 636 705. ... Appellant

-vs-

Registrar of Trade Marks,
Trade Marks Registry,
Intellectual Property Office Building,
G.S.T.Road, Guindy,
Chennai - 600 032, Tamil Nadu ... Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 praying that the impugned order of the Registrar of Trade Marks dated 05.02.2024 to be dismissed / set aside and the subject Trade Mark "PAKODA POINT Home Recipe Eating Makes You Happy



" applied vide application number 6144789 should be allowed to proceed to registration.

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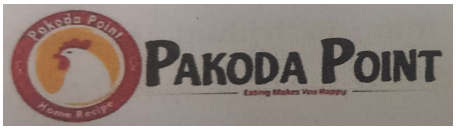
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For appellant : Mr. S. Suresh Kumar

For respondent : Mr. S. N. Parthasarathy
SPC

JUDGMENT

This appeal has been filed, challenging the order dated 05.02.2024, passed by the respondent, refusing to register the appellant's Trade Mark "PAKODA POINT



" on the ground that the mark applied by the appellant is objectionable under Sections 9 (1) (a) and (b) of the Trade Marks Act.

2. According to the respondent, as seen from the impugned order, the appellant's Trade Mark is devoid of any distinctive character and it consists of a mark, which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or services.

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3. The appellant has challenged the impugned order on the ground that, by total non application of mind to the fact that the appellant had applied for Trade Mark registration in respect of a composite mark comprising of the word mark "PAKODA POINT

" and device mark including the tag line "Home Recipe Eating Makes You Happy", the respondent, despite the fact that the appellant's Trade Mark is distinctive in nature, has erroneously and arbitrarily refused to register the appellant's Trade Mark.

4. In support of the appellant's contention, the learned counsel for the appellant drew the attention of this Court to the Trade Mark application submitted by the appellant and would point out that the Trade Mark for which registration was sought for is a composite mark comprising of a device mark and a word mark viz., "PAKODA POINT

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" with a tag line "Home Recipe Eating Makes You Happy".

5. The learned counsel for the appellant also drew the attention of this Court to the search report obtained from the respondent, pertaining to similar marks as that of the one applied by the appellant and as seen from the same, a Trade Mark by the name "Pakoda Hub" was allowed to be registered by the respondent under class 43 of the Trade Marks Act. He has also pointed out other Trade Marks with a similar name "Pakoda" have been registered by the respondent. Therefore, he would submit that by total non application of mind to the fact that the appellant's Trade Mark is a composite mark, the respondent has erroneously refused to register the same by applying Sections 9 (1) (a) and (b) of the Trade Marks Act, 1999.

6. The learned counsel for the appellant also drew the attention of this Court to a Judgment of the Delhi High Court in the case of ***Navaid Khan Vs. Registrar of Trade Marks Office*** reported in ***2023 SCC Online Del***

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3273 and would submit that the Delhi High Court had set aside the impugned order by inferring that the applicant therein had applied for registration of a composite mark, however, the respondent has erroneously refused to register the same, treating that the application was only for a word mark registration. Relying upon the said Judgment, the learned counsel for the appellant would submit that in the present case also, by total non application of mind to the fact that the appellant had infact applied only for a composite mark, the respondent has erroneously refused to register the said Trade Mark, treating the appellant's application as if the appellant had sought for registration of word mark ("PAKODA POINT") alone.

7.On the other hand, the learned Standing Counsel appearing for the respondent drew the attention of this Court to Sections 9 (1) (a) and (b) of the Trade Marks Act and would submit that the respondent had rightly passed the impugned order, since the appellant's Trade Mark is devoid of any distinctive character and it denotes a particular kind of product, which in the instant case is "Pakoda". He would also submit that in so far as the reference to the search made by the appellant before the Trade Mark Registry with regard to registration of similar marks is concerned, he would

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submit that the marks referred to therein are totally different and cannot be cited as an example for the purpose of registration of the appellant's Trade Mark.

8. After hearing the submissions of both the counsels, this Court is of the considered view that the respondent has refused to register the appellant's mark only based on the word Mark "PAKODA POINT", whereas the appellant had applied for Trade Mark registration in respect of a composite mark, which contains the word mark "PAKODA POINT", the device mark "PAKODA POINT HOME RECIPE" and the tag line, "Eating Makes You Happy".

9. Only on the ground that the word mark of the appellant viz., "PAKODA POINT" is not distinctive in character and it denotes a kind of product, the respondent has refused to grant registration of the appellant's Trade Mark. But, whereas the appellant had applied for a composite mark as stated supra and no reasons have been given by the respondent as to why such a composite mark, which the appellant claims has a distinctive identity, has been rejected in the impugned order.

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10.The Delhi High Court, in the decision relied upon by the learned counsel for the appellant, also supports the case of the appellant as the Delhi High Court has also interfered with the impugned order passed by a Trade Mark Registry, where, by total non application of mind to the fact that the applicant therein had infact applied for a composite mark but whereas while rejecting the said application, the Trade Mark Registry had refused to register the same by considering the word mark alone.

11. The search report filed by the appellant before this Court in so far as the Trade Marks registered with similar names starting with the name "Pakoda" also raises some doubt in the minds of this Court as to how the appellant's case alone has not been allowed to be registered.

12. In the interest of justice, this Court is of the considered view that, after recording the aforesaid observations that no prejudice would be caused, if the respondent publishes the appellant's Trade Mark in the Trade Mark's Journal and in case, any third party is having any objection with regard to the appellant's Trade Mark, the third party can file an opposition petition, opposing registration of the appellant's Trade Mark and once such an opposition petition has been filed, the application can be considered by

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ABDUL QUDDHOSE,J.

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the respondent, on merits and in accordance with law.

13. For the foregoing reasons, the impugned order dated 05.02.2024 passed by the respondent is hereby quashed and this appeal is allowed by directing the respondent to publish the appellant's Trade Mark in the Trade Mark Journal within a period of eight weeks from the date of receipt of a copy of this order and invite opposition, if any from any third party and once such an opposition petition is filed, the respondent is directed to consider the same, on merits and in accordance with law, after affording a fair hearing to the parties. No costs.

03.12.2024

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Index: Yes/No
Speaking/Non Speaking Order
Neutral Citation Case: Yes/No

To
Registrar of Trade Marks,
Trade Marks Registry,
Intellectual Property Office Building,
G.S.T.Road, Guindy,
Chennai - 600 032, Tamil Nadu.

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