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

\+ C.A.(COMM.IPD-TM) 73/2021

HYCLONE LABORATORIE, INC. ..... Appellant

Through: Mr. Jithin M. George and Mr. Prashant Gupta, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC, Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **10.01.2024**

I.A. No.15359/2023 *(under Section 151 of the Code of Civil Procedure, 1908 for change of name of the Appellant)*

1. During the pendency of the present proceedings, the Appellant-company has amended their name from "Hyclone Laboratories Inc." to "Hyclone Laboratories LLC". A certified copy of the amended Articles of Association of Appellant, evidencing the change has been annexed with the application.

2. The application is allowed and disposed of. Amended memo of parties is taken on record.

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3. The Appellant's application No. 2448093 for registration of the

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device mark "CELL BOOST" in class 01 has been refused under Section 9 of the Trademarks Act, 1999 by the Respondent on 28th January, 2019.

4. As per the Statement of Grounds of Decision dated 08th March, 2019, the mark is devoid of any distinctive character and the Appellant did not produce any documentary evidence in support of their user claim. Counsel for the Appellant states that the findings of Senior Examiner of Trademarks are erroneous as a detailed user affidavit was filed by the Appellant, along with a Form TM-M for amendment of application. He contends that these documents placed before the Trademarks Registry have not been considered by the Examiner.

5. The Court has examined Appellant's Form TM-M amending their trademark application as well as the documents accompanied therewith to establish their claimed use of the mark. In the opinion of the Court, these documents ought to have been taken into consideration at the time of deciding the application for registration. The findings of the Senior Examiner are contrary to record, thereby vitiating the order of refusal dated 28th January, 2019, read along with Statement of Grounds of Decision dated 08th March, 2019.

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

(a) Order dated 28th January, 2019 read along with Statement of Grounds of Decision dated 08th March, 2019, refusing registration of the trademark

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“CELL BOOST” is set aside.

(b) The matter is remanded back to the Senior Examiner of Trademarks to decide the matter afresh, taking into account Form TM-M and the documents accompanied therewith.

(c) The Senior Examiner shall render the decision on the application within a period of three months from today.

7. All rights and contentions of the parties are left open.

8. The present appeal is disposed of.

9. 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

JANUARY 10, 2024
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