



## Intellectual Property Appellate Board

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OA/25/2020/TM/CHN

FRIDAY, THIS THE 29<sup>TH</sup> DAY OF JANUARY, 2021

HON'BLE SHRI JUSTICE MANMOHAN SINGH : CHAIRMAN  
HON'BLE MS LAKSHIMIDEVI SOMANATH : TECHNICAL MEMBER (TRADEMARKS)  
HON'BLE MR. MAKYAM VIJAY KUMAR : TECHNICAL MEMBER (TRADE MARKS)

SRI FAMILY ENTERPRISES PVT. LIMITED.,  
NO.1731-(31), 17<sup>TH</sup> CROSS,  
M.C.LAYOUT, VIJAYANAGAR,  
BANGALORE - 560040

.....APPELLANT

(Represented by: Ms.Suma)

**Versus**

THE DEPUTY REGISTRAR OF TRADE MARKS,  
THE OFFICE OF THE TRADE MARKS REGISTRY.  
I.P. BUILDING, INDUSTRIAL AREA, G.S.T. ROAD,  
CHENNAI-600032

.....RESPONDENT

(Represented by: None)

### **ORDER**

**Hon'ble Shri. Vijay Kumar Makyam, Technical Member (Trade Marks)**

1. This is the Appeal against the Order of Deputy Registrar of Trade Marks, Chennai dated 14.03.2019 refusing the device mark "CAFÉ UDUPI RUCHI (WITH DEVICE)" under Application No.3032678 in class 43.

#### **FACTS OF THE CASE**

2. The Appellant had filed an application for Registration of the Trademark "CAFÉ UDUPI RUCHI (WITH DEVICE)" under Application No.3032678 in class 43 on 14<sup>th</sup> May 2015 claiming usage of the mark since 9<sup>th</sup> May 2015. The said Application was duly examined by the Examiner of the Trademarks and sent an Examination Report dated 25<sup>th</sup> July 2016 raising objections under Section 9 and 11 of the Trademark Act, 1999. A suitable reply was filed by the Appellant on 5<sup>th</sup> August 2016. A formal show cause notice for hearing in the said matter was fixed on 24<sup>th</sup> July 2018 to which Appellant appeared and sought adjournment and hence again the hearing was scheduled on 9<sup>th</sup> October 2018 during which the Appellant had filed user affidavit. Further on 11<sup>th</sup> January 2019 the Respondent had adjourned the hearing to 14<sup>th</sup> March 2019; however the Appellant claims that the said communication was not sent to Appellant or its counsels on record.

## **ARGUMENTS MADE BY THE APPELLANT**

3. The learned counsel for the Appellant Ms. Suma submitted that the Respondent erred by failing to give the Appellant due and valid notice of hearing as required. He further erred in conducting the hearing and order was passed against the Appellant even though Appellant had complied with all due provisions of law and user Affidavit filed before the Respondent. Therefore the impugned Order is in violation of Section 18 of the Trade Marks Act, 1999, Rule 9, 18, 33 of Trademark Rules, 2017 as well as the principles of **audialterampartem**, natural justice and equity.

4. The learned counsel stated that the Respondent actions are violating the Principle of Natural Justice and fair play. The principles of Natural justice signify the basic minimum fair procedure which must be followed while exercising decision making powers. The Respondent ought to have adhered to Principles of Natural Justice which is well recognized by all civilised states of supreme importance when a quasi-judicial body embarks on determining disputes in administrative action involving civil consequences in issue.

5. The learned Counsel also argued about the distinctiveness of the mark being device and composite mark and all cited marks belonging to Appellants alone and others marks are adopted after the Appellant. The Appellant also obtained Registration of same mark in multiple jurisdictions such Mauritius, Hong Kong, Malaysia, Singapore, Japan, U.A.E., Europe, Australia and United Kingdom. The Appellant also filed voluminous documents to show user of the mark.

## **FINDINGS**

6. We have examined the Order of Registrar of Trade Marks, Delhi dated 14.03.2019 in refusing the device mark “CAFÉ UDUPI RUCHI (WITH DEVICE)” under Application No.3032678 in class 43 and reviewed the submissions of the Appellant. The fact stands that the impugned Order was erroneously passed without according a hearing to the Appellant. This was palpably wrong, beyond comprehension, not recognized or supported by the provisions of the Act and in gross violation of the principles of natural justice. We are however not dealing with the merits in the matter as the Appellant during the arguments requested a remand back of the matter to Registrar of grounds that Appellant needs to be heard before any orders passed by the Respondent.

7. It is further pertinent to mention that there is no speaking order or reasoning provided for the refusal of the impugned mark as to why the usage document or affidavit has not taken into consideration for passing the impugned order. It need to be noted that Trade Marks Act 1999 is a Special Act and thus all Sections are to be applied strictly as per law stipulated in the Statute. Under no circumstances self-made procedure and guidelines can be adopted even for the sake of earlier disposal of any matter. The interpretation of any Section should not be misinterpreted for the sake of convenience.

8. The Respondent being creation of the Act and constituted under the provisions of the Act, is expected to follow the provisions of law meticulously in passing detailed orders more specifically in

consonance with Sub Section 5 of Section 18 of the Act read with Rule 36 of Trade Marks Rules, 2017. Section 18(5) of the Act reads as under **“In the case of refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal and conditional acceptance and the material used by him in arriving at his decision.”** A similar language has been used in Rule 36. Section 18 of the Trademark Act, 1999 is an incumbency provision which cannot be disregarded by the Respondent in passing its orders.

9. The impugned order displays that Respondent has not considered the submission of the Appellant and seems to have been passed without any application of mind. If the Respondent would have considered the contentions of the Appellant and discussed the documents filed by it as the Appellant claimed that it had filed user Affidavit and made submission earlier occasions when hearing was scheduled earlier. However, without considering all these aspects, the respondent has passed the impugned order in violation of principles of natural justice since it is an order without due service on the Appellant, the Appellant thus being deprived of an opportunity of proper hearing and of presenting documents sought to be filed. The Order of Deputy Registrar of Trade Marks, Chennai dated 14.03.2019 refusing the device mark “CAFÉ UDUPI RUCHI (WITH DEVICE)” under Application No.3032678 in class 43 is therefore liable to be set aside.

10. Taking into consideration of the above, the Appeal is hereby allowed. Impugned order dated 14.03.2019 passed by Respondent refusing the device mark “CAFÉ UDUPI RUCHI (WITH DEVICE)” under Application No.3032678 in class 43 is set aside. The matter is thus remanded back to Respondent which shall decide the said Application by giving opportunity to the Appellant in accordance with law. A copy this order is directed to be sent to Respondent for immediate implementation of this order. There is no order regarding costs.

-Sd/-

-Sd/-

-Sd/-

(Ms. Lakshmidēvi Somanath)  
Technical Member (Trademarks)

(Shri. Makyam Vijay Kumar)  
Technical Member (Trademarks)

(Shri Justice Manmohan Singh)  
Chairman

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