



Intellectual Property Appellate Board

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OA/3/2020/TM/CHN

WEDNESDAY, THIS THE 23RD DAY OF DECEMBER, 2020

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

Mindtree Limited
Global Village, RVCE Post,
Mysore Road, Bangalore-560059.....APPELLANT

Represented by: Ms.ShyamolinaSengupta

Versus

THE REGISTRAR OF TRADE MARKS,
OFFICE OF THE TRADE MARK REGISTRY,
INTELLECTUAL PROPERTY OFFICE BUILDING,
G.S.T Road, Gunidy, Chennai-600032.RESPONDENT
(Represented by: None)

ORDER

HON'BLE MR. MAKYAM VIJAY KUMAR Technical Member (Trade Marks)

1. This is the Appeal against the order of Respondent i.e., Registrar of Trade Marks, Chennai



dated 11/02/2019("The Impugned Order") refusing the registration of Trademark under Trade Mark Application No.3582179 in class 41 and detailed Statement of Ground provided for the same on 29/03/2019.

2. The Appellant states that this application was filed on 30th June 2017 in respect of Providing services of Providing education and training services in the field of Agriculture, farming, animal husbandry and forestry.,claiming the usage of the mark since 29th April 2016.

3. Thereafter, the application was examined and examination report dated 1st August 2017 was issued. Objections were raised under section 9 of the Trade Marks Act, 1999 that it is

descriptive of goods/services applied for. The Appellant filed its Reply to the Examination Report on 24th August 2017. Thereafter, the Hearing was listed for 11th February 2019. At the hearing the Respondent maintained the Objections despite the arguments of the Appellant. The Appellant made



submissions with respect to the distinctiveness of its trade mark as a unique combination of words and Device mark. Having heard the detailed submissions on behalf of the Appellant, the Respondent passed an order refusing the mark on 11th February 2019 and thereafter the Appellant has sought ground of the said decision on 8th March 2019 and the Statement of Grounds of Decision was provided to the Appellant on 11th April 2019. The Order reads as follows – *“With reference to the above and request on Form TM-M dated 08/03/2019. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 11/02/2019 and the said application is refused on the following Grounds; * Adv. shyamolima appeared and submitted that mark is distinct user since 2016 heard, examine the application no relevant supporting documents filed to prove distinctiveness objection can not be waived hence application is refused.* 9 - Absolute grounds for refusal of registration.* 9(1)(a) - The trade mark is devoid of any distinctive character, that is to say, not capable of Distinguishing the goods or services of one person from those of another person.”*

4. Aggrieved by the impugned order and decision dated 11th February 2019 along with the Statement of Ground provided on 29th March 2019 passed by the Respondent, the Appellant has filed the present appeal before us.

5. The learned counsel for the Appellant Ms. Shyamolina Sengupta submitted that the






Registrar of Trade Marks had erred by deciding that the impugned trademark of the



Appellant as descriptive. The case of the Appellant is that the trademark is a combination words and inherently distinctive device trademark for services under class 41.

6. The learned counsel for the Appellant further stated that the similar word mark “**I GOT CROPS**” was Registered in its favor by **Application No. 3582194** for similar class and similar description of Services.

7. It is also contended by the learned counsel for the appellant that the subject trademark “**I GOT CROPS**” as word and label have also been Registered in various other classifications such as classes 9, 16 and 42 and the list of said Registrations are provided hereunder: -

Sl.No.	Trademark	Application No.	Class	Status
1.		3582163	9	Registered
2.		3582164	16	Registered
3.		3582165	35	Registered
4.	I GOT CROPS (Word)	3582183	16	Registered
5.	I GOT CROPS (Word)	3582182	9	Registered
6.	I GOT CROPS (Word)	3582180	42	Registered

8. The learned Counsel for the Appellant also stated that the artistic work



has secured Copyright Registration vide Registration number A-126203/2018.

9. The Appellant has also relied on the following Judgements: a) Consim Info Private Limited Vs. Google Indian Private Ltd., MANU/TN/2647/2012/ 2013 (54) PTC 578(Mad), b) ITC Limited Vs. Nestle India Limited., MANU/TN/0950/2015/ 2015-3-LW183, MIPR2015(2)40, c) Anil Verma Vs. R.K.Jewellers S.K. Group and Ors, MANU/DE/1435/2019/ CS (COMM) 1097/2018.

10. We have examined the Registrar's impugned order dated 11/02/2019 and Statement of grounds dated 29/03/2019 and reviewed the submissions of the Appellant. It is evident that the Respondent orders are non-speaking orders in that no reasons were given in impugned orders nor the evidence produced was discussed. The examiner report has also not been discussed in the said orders. Mechanical orders were passed. Being having the original jurisdiction with Respondent. It was the duty of the officer to record facts and discuss the submissions of the party in writing before refusing the

application.

11. It is pertinent to note that the Appellant other word mark is already Registered under Application No.3582194 in similar class for similar set of services being word mark that is already Registered there is no point refusing the device mark which is much more distinctive than the



word mark. The mark for the services applied cannot be termed as descriptive; however even assuming that the said mark is descriptive of the services; the user claimed by the Appellant makes the mark eligible for Registration as it acquired the secondary Significance/ acquired distinctiveness as to its usage that is provided as per the provisio of Section 9(1) of the Trademark Act, 1999. The Respondent would have taken the above into consideration before passing the impugned orders dated 11th February 2019 to which Statement of Grounds provided on 29th March 2019.

12. In view of the above, the present appeal is allowed. The order dated 11th February 2019 to which Statement of Grounds provided on 29th March 2019 are set-aside. The Application No. 3582179 in class 41 of the appellant be accepted and proceeded further as per rules.

13. No costs.

-Sd/-

-Sd/-

-Sd/-

(Ms. Lakshmidevi Somanath)
Technical Member (Trademarks)

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

(Shri Justice Manmohan Singh)
Chairman

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