

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL MISCELLANEOUS PETITION NO.1249 OF 2022

Taramis Labs Private Limited	...	Petitioner
Vs.		
Registrar of Trade Marks	...	Respondent

Mr. Rishi Murarka for Petitioner.
None for Respondent.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 05, 2022

P.C. :

. Heard Mr. Murarka, learned counsel appearing for the petitioner.

2. By the present commercial miscellaneous petition filed under Section 91 of the Trademarks Act, 1999, the petitioner has challenged the order dated 14.03.2022 passed by the Senior Examiner of Trade Marks, whereby an application for registration of the word mark 'Foodstrong' filed by the petitioner has been rejected under Section 9(1) (a) of the aforesaid Act as it is found to be devoid of any distinctive character.

3. The petitioner served the sole respondent i.e. the Registrar of Trade Marks by email on 30.05.2022 and by Registered Post A.D. on 31.05.2022. Despite service, none has appeared on behalf of the sole respondent. Learned counsel for the petitioner informs this Court that the sole respondent was intimated about the hearing fixed for today by email as also by the Registered Post A.D. Despite the intimation given to the sole respondent, none has appeared even today.

4. Learned counsel for the petitioner has invited attention of this Court to the impugned order dated 14.03.2022 and submitted that it is cryptic in nature, without discussing the contentions raised on behalf of

the petitioner. It is submitted that the word 'Foodstrong' could not have been held to be devoid of any distinctive character in such a cryptic manner. It is submitted that the proposed registration of the trademark is in the context of food supplements that the petitioner manufactures and sells. Attention of this Court is invited to the documents downloaded from various websites including Facebook and Amazon to show the presence of the said product with the mark 'Foodstrong' in the context of food supplements. It is submitted that the petitioner started using the said mark since the year 2020 and that as on today, its sales turnover is about Rs.8 crores. Learned counsel emphasized that the Registrar ought to have taken into consideration *proviso* to Section 9(1), which stipulates that a trademark shall not be refused registration if before the date of application for registration, it has acquired a distinctive character as a result of the use made of it. According to the learned counsel for the petitioner, there is no discussion on this aspect of the matter, and that therefore, the impugned order passed by the Senior Examiner of Trade Marks deserves to be set aside.

5. In support of his contentions, learned counsel has relied upon the order of this Court dated **06.10.2021** passed in **Commercial Appeals (L) No.18137 and 18138 of 2021** (*Metso Outotec Corporation Vs. Registrar of Trade Marks*) and the judgment dated **08.07.2022** of the Delhi High Court in **C.A. (COMM. IPD-TM) 133 of 2022** (*Disruptive Health Solutions Private Limited Vs. Registrar of Trade Marks*).

6. This Court has considered the material on record. Since the sole respondent i.e. Registrar of Trademarks has chosen not to appear before this Court despite service and intimation of hearing fixed for today, this Court has taken up the petition for consideration and disposal.

7. Perusal of the impugned order does show that it is cryptic in nature and other than reproducing the relevant words of Section 9(1)(a)

of the aforesaid Act, the sole respondent has not made any effort to consider the material made available in support of the application submitted by the petitioner. In this context, it would be appropriate to refer to the nature of material placed before the sole respondent. The material on record shows that on 25.08.2020, the sole respondent sent an intimation to the petitioner stating that the application is liable to be refused and requested the petitioner to respond with submissions along with the supporting documents within a period of one month from the date of the said communication / examination report. On 09.09.2020, a response was submitted on behalf of the petitioner wherein it was emphasized that the mark was a coined expression and that it did not violate the provisions of Section 9 of the aforesaid Act as pointed out in the examination report. It was further claimed that the products of the petitioner are manufactured *inter alia* without addition of any preservatives and that this establishes the relevancy of the coined word 'Foodstrong'. It appears that the material, now placed on record before this Court, including the sales turnover and the nature of food supplement produced and marketed by the petitioner under the mark 'Foodstrong' were not placed before the sole respondent i.e. Registrar of Trade Marks.

8. Therefore, this Court is of the opinion that to find fault with the impugned order, on the basis of the material produced before this Court for the first time, would not be fair. Nonetheless, the impugned order passed by the Senior Examiner of Trade Mark is a cryptic order, without any detailed reasons and simply based on mechanical reproduction of Section 9(1)(a) of the aforesaid Act. In these circumstances, a case for remanding the matter is certainly made out on behalf of the petitioner. In fact, in the order passed by this Court in **Metso Outotec Corporation Vs. Registrar of Trade Marks** (*supra*), this Court set aside the order of the Registrar and remanded the matter for fresh consideration. The

judgment of the Delhi High Court on which learned counsel for the petitioner has placed reliance is distinguishable for the reason that the detailed material placed on record on behalf of the petitioner therein was available before the Registrar, which indicated presence of the petitioner therein in the market since 2015 with several registered marks in various classes already in favour of the petitioner, both in logo and word forms and the extent of the sales turnover. Such details, in the present case, do not appear to have been placed before the Registrar and therefore, it would be appropriate to remand the matter for fresh consideration. It would be appropriate that the Registrar takes into consideration *proviso* to Section 9(1) of the said Act, while considering the application filed on behalf of the petitioner.

9. In view of the above, the impugned order is quashed and set aside. The matter is sent back to the sole respondent i.e. the Registrar of Trade Marks for consideration afresh and in accordance with law. The petitioner is granted liberty to place on record additional material before the Registrar, within four weeks from today. The Registrar shall take up the application of the petitioner for consideration expeditiously and shall dispose of the same within eight weeks from today.

10. Petition is disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab