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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 18th May, 2022***

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C.A. (COMM.IPD-TM) 129/2021**RADICO KHAITAN LTD****..... Appellant**

Through: Mr. Sagar Chandra, Ms. Ishani Chandra, Ms. Surabhi Iyer, Ms. Lavni Kashyap, Mr. Abhishek Bhati, Advocates. (M:9654041529)

versus

THE REGISTRAR OF TRADE MARKS**..... Respondent**

Through: Mr. Harish Vaidyanathan, (CGSC) Mr. Karan Chibber, Ms. S Bushra Kazim & Ms. Zeeshan Rizvi, Advocates for UOI. (M:9810788606)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal was filed before the IPAB and has been received by this Court, pursuant to the Tribunals Reforms Act, 2021.
3. The appeal under section 91 of the Trade Marks Act, 1999 (*hereinafter 'Act'*) challenges the impugned order dated 11th August, 2020 by which the review petition filed by the Appellant has been dismissed. The said petition was filed by the Appellant seeking review of the order dated 06th July, 2018 vide which the trade mark application of the Appellant bearing no. 2387450 for the registration of the mark "*EFKAY'S FIVE STAR MYSORE BRANDY*" in class 33 was rejected.
4. The said application was filed on 17th August, 2012. Following the application, the examination report was issued by the Registrar of



Trademarks dated 12th August, 2013. The Appellant filed its reply to the examination report on the 30th April, 2015. Thereafter, the application was rejected by the Senior Examiner of Trade Marks vide order dated 06th July, 2018. The relevant order reads as under:

“The trade mark applied for is objectionable under section 9/11 of the Act. The application is accordingly refused.”

5. A review petition was preferred by the Appellant against the said order. The same was dismissed vide the impugned order dated 11th August, 2020 in the following terms:

“An application for registration of trade mark consisting of word “EFKAY’S FIVE STAR MYSORE BRANDY” was filed by the aforesaid Applicant under application No 2387450 in respect of applied goods included in Class – 33. The application was examined and examination report containing the objections to the acceptance of application for registration of trade mark was communicated to the Applicant. On the request of the Applicant, a hearing was fixed in this matter. Eventually on 03 May 2018, the application came up before me for hearing and the order was passed accordingly.

The present petition on form TM-M has been filed for review of the order dated 06 July 2018.

SEC 11.SAME OBJECTIONS HENCE REFUSED DESCRIPTION GOODS/SERVICES ARE ON RECORD. OBJECTION U/S 11 OF THE ACT. EVIDENCE NOT PROPER.SECT 9(1) B OF THE ACT OBJECTION HENCE REFUSED. THE MARK IS LAUDATORY, OBJECTION UNDER SECTION 9(1) B OF THE ACT NO EVIDENCE FILED.

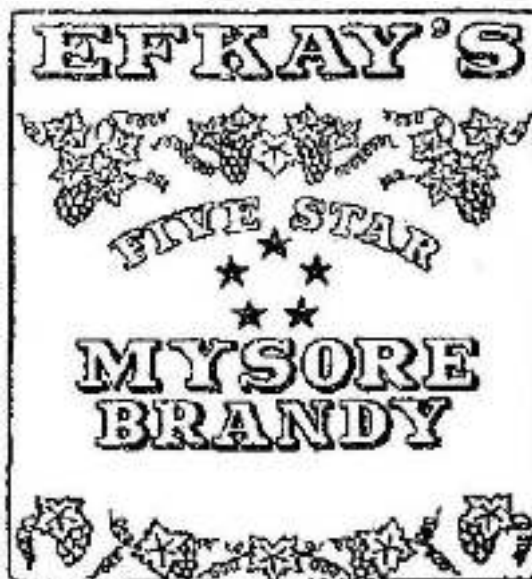
The request on form TM-M is accordingly Refused.”



6. Thus, the application was refused on broadly three grounds which are—

- Section 11 objection;
- Evidence not filed;
- The mark is laudatory and hence refused under Section 9 of the Act.

7. Ld. counsel for the Appellant submits that the Appellant had also applied for registration of “EFKAY’S FIVE STAR MYSORE BRANDY” as a label mark. The said mark has already been granted vide registration no. 2387451 under class 33. The registered label is as under:



8. Ld. Counsel further submits that insofar as the mark “EFKAY’S” is concerned, the rights in respect of the same vest in the Appellant in view of the assignment deed dated 29th March, 2012. The relevant extract of the assignment deed is as under:

“The Assignor is the exclusive owner and proprietor in India, under the Trade Marks Act, 1999, of the following trademarks (hereinafter referred to as TRADEMARKS), brief particulars of which are given



below:

<i>Trade Mark</i>	<i>Number</i>	<i>Class</i>	<i>Valid upto</i>
<i>Efkays 3 Star Queen Brandy</i>	<i>470844</i>	<i>33</i>	<i>15/4/2018</i>
<i>Royal Lancer Whisky</i>	<i>470843</i>	<i>33</i>	<i>15/4/2017</i>
<i>Three Feathers Gin</i>	<i>470846</i>	<i>33</i>	<i>15/4/2018</i>
<i>Efkays Whisky</i>	<i>472220</i>	<i>33</i>	<i>14/5/2018</i>
<i>Bamboo Club Gin</i>	<i>470841</i>	<i>33</i>	<i>14/4/2018</i>
<i>Efkays 5 Star Mysore Brandy</i>	<i>279509</i>	<i>33</i>	<i>Lapsed</i>
<i>Efkays*</i>	<i>223919</i>	<i>33</i>	<i>21/8/2016</i>
<i>Efkays XXX Rum</i>	<i>470845</i>	<i>33</i>	<i>Lapsed</i>

****Efkays transfer and use by YEZDI to RADICO will be limited to Class 32 & 33 of the Trade marks Act.***

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES HERETO, IT IS HEREBY AGREED

1. For and in consideration of a sum of Rs.200 Lac (Rupees Two Hundred Lac only) plus applicable VAT of Rs.28,00,000 (Rupees Twenty Eight Lacs only) paid to the Assignor by the Assignee, the receipt of which the Assignor doth hereby acknowledges, the Assignor does hereby sell, assign and transfer unto the Assignee, its successors and assigns, its entire right, title and interest in and to the said trade mark together with all the goodwill connected with and symbolized by the said trade mark, the same to be held and enjoyed by the Assignee.

2. The Assignor agrees to execute and deliver, at the request of and at the cost of the Assignee, all



papers and instruments and to do and perform all reasonable acts as may be necessary and required to vest such right, title and interest in the Assignee.”

9. Heard the Id. Counsels and perused the record. On an overall consideration of the matter, it is clear that the “*EFKAY’S*” registrations which now stand assigned in favour of the Appellants do not appear to have been properly considered by the Senior Examiner while considering the application in question. Owing to the registrations which are now assigned to the Appellant, the grounds for refusal under Section 11 would not be attracted.

10. However, considering that the present mark “*EFKAY’S FIVE STAR MYSORE BRANDY*” is a word mark consisting of other terms/words, the matter is remanded to the Senior Examiner for reconsideration of the application in respect of parts of the mark other than “*EFKAY’S*”. The Senior Examiner is directed to take a decision in accordance with law on the application.

11. The Registrar shall afford an opportunity of hearing to the Appellant and pass orders in accordance with law within a period of four months.

12. With these observations, the appeal, and all pending applications are disposed of. The next date of hearing is cancelled.

13. Copy of today’s order to be supplied to the Trademark Registry for compliance through Mr. Harish Vaidyanathan, Id. CGSC.

PRATHIBA M. SINGH
JUDGE

MAY 18, 2022*dj/ss/sk*