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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 3rd November, 2022

+ **C.A.(COMM.IPD-TM) 134/2021**

JINDAL INDUSTRIES PRIVATE LIMITED Appellant

Through: Mr. Rishabh Srivastava, Ms. Shreeya Rastogi & Ms. Sunita, Advocates.

versus

THE REGISTRAR OF TRADE MARK Respondent

Through: Mr. Harish V. Shankar, CGSC, Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Advs. (M:9810788606)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. This is an appeal under Section 91 of the Trade Marks Act, 1999 (*hereinafter 'Act'*) challenging the order dated 17th September, 2019 passed by the Trade Marks Registry read along with statement of grounds dated 14th July, 2020. Vide the said order, the trademark application of the Appellant/Applicant (*hereinafter 'Applicant'*) has been rejected. The details of the Applicant's trade mark application are as under:

Mark	Application No.	Application Date	Class	Applicant
	1856072	28 th August, 2009	11	M/s Jindal Industries Pvt. Ltd.

3. The said mark has been rejected by the Trade Mark Registry under Section 9 of the Act as also the Emblems and Name (Prevention of Improper Use) Act, 1950. The relevant portion of the order impugned order dated 17th September, 2019 reads as under:

“An application for registration of trade mark consisting of word " Jindal " was filed by the aforesaid Applicant under application No 1856072 in respect of applied goods included in Class -11. 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 12 February 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 16 February 2018.

ADV APOORVA APPEARED SECTION 9(1) A OBJECTION HENCE REFUSED. THE MARK IS NON DISTINCTIVE.THE MARK IS PROHIBITED UNDER SECTION 9(2) D OF THE ACT.

The request on form TM-M is accordingly Refused.

Sealed and signed at the Trade Marks Registry, Branch Delhi on dated : 17 September 2019.”

4. It is the case of the Applicant that it has been using similar marks since 1961 and holds registration in respect of them under various classes including Classes 6, 17, 11. Ld. Counsel for the Applicant further relies upon the judgment of this Court in ***C.A.(COMM.IPD-TM) 99/2021*** titled ***M/s Jindal Industries Pvt. Ltd. v. The Registrar of Trade Mark*** as also in ***C.A.(COMM.IPD-TM) 99/2021*** titled ***M/s Jindal Industries Pvt. Ltd. v. The Registrar of Trade Mark*** to argue that the Emblems and Names (Prevention of Improper Use) Act, 1950 does not prevent the use of outline

of the map of India as a trade mark.

5. Heard and perused the record. The order under challenge in the present appeal does not consider the fact that similar trademarks have already been registered by the Appellant in several Classes.

6. The impugned order is completely silent on other registrations which have been granted in favour of the Applicant for identical/ similar marks in other classes. Further the Trade Mark Registrar did not take into consideration the no objection given by the Survey of India in favour of the Applicant in respect of the mark in question.

7. This Court had the occasion to consider a similar matter in **C.A.(COMM.IPD-TM) 99/2021** where the application was filed by this very Applicant for an identical mark as in the present matter in Class 17 which was rejected by the Trade Mark registry on identical grounds. The Court had observed therein as under:

“13. A perusal of the record shows that the Schedule to The Emblems and Names (Prevention of Improper Use) Act, 1950 does not, prevent the use of the outline of the map of India. Moreover, vide letter dated 8th February, 1994, as extracted hereinabove, the Survey of India has already given a ‘No Objection’ to the Appellant-M/s. Jindal Industries Pvt. Ltd., for use of the impugned mark ‘JINDAL’ with the outline of the map of India, as set out above. Various other registrations which have been granted in favour of the Appellant also show that there are several marks wherein the outline of India has been depicted. Thus, the reasoning given by the Registrar of Trademarks is completely unsustainable. Moreover, the use of the outline of India signifies that the product originates from India, and thus, the use of the same cannot be held to be violative of Section 9 of the Trade Marks

Act, 1999, or The Emblems and Names (Prevention of Improper Use) Act, 1950.

14. Accordingly, the impugned orders are set aside. The Registrar of Trademarks is directed to proceed for registration of the impugned mark. Let the impugned mark be advertised within a period of 3 months. If there is any opposition in respect to the impugned mark, the same shall be decided by the Registrar of Trademarks, in accordance with law, without being affected by the observations in the present order”

8. This order has been affirmed and relied upon by the Id. Single judge in **C.A.(COMM.IPD-TM) 34/2021** wherein the Court, again dealing with an identical mark as in the present appeal under Class 6, vide its order dated 28th July, 2022, held as under:

*“9. The impugned order does not reflect the consideration of the Examiner of Trade Marks on the issue that the appellant is a registered proprietor of the mark “JINDAL” in various variants and for various classes, including Class 6. **Some of the cited marks were that of the appellant itself. Therefore, rejection of the application of the appellant on this ground cannot be sustained.***

10. As far as the outline of the map of India is concerned, again the appellant is the registered proprietor of similar marks for other classes of goods, as had been contended by the appellant in its appeal. Even otherwise, a Co-ordinate Bench of this Court has considered this aspect as held as under:-

“13. A perusal of the record shows that the Schedule to The Emblems and Names (Prevention of Improper Use) Act, 1950 does not, prevent the use of the outline of the map of India. Moreover, vide letter dated 8th February, 1994, as extracted hereinabove, the Survey of India has already given a ‘No-Objection’ to the Appellant-M/s. Jindal Industries Pvt. Ltd., for

use of the impugned mark 'JINDAL' with the outline of the map of India, as set out above. Various other registrations which have been granted in favour of the Appellant also show that there are several marks wherein the outline of India has been depicted. Thus, the reasoning given by the Registrar of Trademarks is completely unsustainable. Moreover, the use of the outline of India signifies that the product originates from India, and thus, the use of the same cannot be held to be violative of Section 9 of the Trade Marks Act, 1999, or The Emblems and Names (Prevention of Improper Use) Act, 1950."

*11. On ground (c), the rejection of the application of the appellant on the ground of it being unable to substantiate the user claim since 01.04.1961, also cannot be sustained. **The Registrar of Trade Marks has not stated that no user of the mark was proven in the present case or that the mark was not distinctive for the appellant. In absence thereof, the rejection of the mark was not proper.***

12. In view of the above, the impugned order is set aside. The Registrar of Trade Marks is directed to proceed with the registration of the impugned mark. Let the impugned mark be advertised within a period of three months. If there is any opposition in respect of the impugned mark, the same shall be decided by the Registrar of Trade Marks in accordance with law, remaining unaffected from any observation made in the present order. "

9. The rationale and reasoning of the above two orders are completely applicable *mutatis mutandis* to the present appeal as well. In the opinion of the Court, the impugned order is thus completely unsustainable and is accordingly set aside.

10. The Registrar of Trade Marks is accordingly directed to proceed for

registration of the application. Let the same be advertised within a period of three months.

11. If there is any opposition to the said application, the same shall be decided on its own merits without being affected by the observations made herein.

12. With these observations the appeal is disposed of. All pending applications are also disposed of.

13. Registry to supply a copy of the present order to Trade Mark Registry at llc-ipo@gov.in for compliance.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 3, 2022
dj/sk

