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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

**(T)CMA(TM) No. 83 of 2023
(OA/11/2020/TM/CHN)**

M/s.VRV Foods
Represented by its Partner Mamidipally Vani,
#12-13-853/21, Street No.1, Taranaka,
Secunderabad-500 017, Telangana, India. ... Appellant

Vs.

Assistant Registrar of Trade Marks,
Intellectual Property Office,
Intellectual Property Office Building,
G.S.T.Road,
Guindy, Chennai-600 032,
Tamil Nadu, India. ... Respondent

PRAYER : This Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 in respect of Goods or Services falling in one class prays that (a) the order of the Assistant Registrar of Trade Marks be dismissed and the subject Trade Mark be allowed to proceed to registration and (b) any other further order that this Court may deem fit and proper in the facts and circumstances of the case be passed.



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For Appellant : Mr.B.Karthik

For Respondent : Mr.A.R.Sakthivel, SPC

JUDGMENT

The appellant assails an order dated 25.03.2019 by which Application No.2805581 for registration of the following device mark was refused:



2. The appellant filed the application for registration of the mark extracted above on 08.09.2014. Such application was made by asserting use from 04.08.2014. The application was in class 35 in respect of 'retail outlets, trading, distribution and the like. By examination report dated 18.12.2015, the Registrar of Trade Marks raised objections both under Sections 9 and 11 of the Trade Marks Act, 1999 (the Trade Marks Act). In response thereto, by reply dated 19.01.2016, the appellant asserted that the device



mark is distinctive and capable of distinguishing the services of the appellant from those of others. Each of the cited marks was also dealt with in the reply by asserting that the appellant's trade mark is distinguishable from the cited marks. After a hearing on 25.03.2019, the impugned order dated 25.03.2019 was issued. The grounds of decision were provided on 29.04.2019.

3. Learned counsel for the appellant invited my attention to the device mark of the appellant and pointed out that it consists of three elements, namely, the words 'Kitchen Made'; the stylized alphabet 'Q' with a mortar and pestle placed inside; and the words 'Tradition', 'Taste' and 'Trust' written beneath the words 'Kitchen Made'. When viewed as a whole, learned counsel contended that the mark is distinctive and that the objections under Section 9 of the Trade Marks Act are untenable. With regard to the objections under Section 11, learned counsel contended that the first cited mark is a device mark which contains the words 'Kitchen Centre' along with a device. Therefore, he submits that this mark is distinguishable from the appellant's mark. As regards the second cited mark, learned counsel submits that the



registration was not renewed and that the mark is no longer in force. As regards the third and fourth cited marks, he submits that the application for registration was refused.

4. Learned counsel further submits that the impugned order is bereft of reasoning and that the grounds of refusal merely record conclusions that the cited marks are identical and are applied in relation to similar goods/services. Therefore, he concluded his submissions by stating that the impugned order is liable to be set aside.

5. In response, Mr.A.R.Sakthivel, learned SPC, submitted that the appellant's mark consists of two dominant features. According to Mr.Sakthivel, neither of these dominant features are distinctive. By way of illustration, he submits that the device of a mortar and pestle is commonly used in relation to food products. He further submits that the anti-dissection rule does not impose an embargo on the examination of the dominant or prominent features of the mark. In support of this contention, learned counsel referred to and relied upon the judgment of the Division Bench of



the Delhi High Court in *M/s. South India Beverages Pvt. Ltd. vs General Mills Marketing Inc. & Another*, CDJ 2014 DHC 2287, particularly paragraphs 20 and 21 thereof.

6. Thus, learned counsel submits that none of the three elements of the appellant's mark, including the two dominant or prominent features, are distinctive. Consequently, he submits that the rejection by reference to Section 9 of the Trade Marks Act is fully justified. He further submits that the appellant did not provide any evidence of use in proceedings before the Registrar of Trade Marks. Consequently, he submits that such evidence should not be considered at this juncture.

7. On examining the appellant's mark, it is evident that it is a device mark comprising three elements. A stylized alphabet, which was referred to as the letter 'Q' by the appellant with a mortar and pestle placed within such alphabet. Beside the said device are the words 'Kitchen Made'. Beneath the words 'Kitchen Made' are the words 'Tradition', 'Taste' and 'Trust'. For purposes of deciding whether a mark is devoid of distinctive character, the



mark is required to be examined as a whole. Such exercise cannot be carried out in vacuum and should be carried out with reference to the goods or services in relation to which the mark is used. In relation to the services under class 35, it cannot be said that the device mark of the appellant is descriptive of the kind, quality or characteristics of the service.

8. Learned counsel for the respondent contended that the prominent features of the mark are not distinctive by relying on the judgment of the Division Bench of the Delhi High Court. The principle laid down by the Delhi High Court is that the anti-dissection rule and the identification of the dominant mark are not antithetical to one another. There can be no quarrel with this proposition. For purposes of determining as to whether there is likelihood of confusion among the public, it is certainly permissible to look at the prominent features of the mark. At this juncture, the examination is limited to whether the mark as a whole is distinctive for purposes of Section 9 and whether there is likelihood of confusion with specific reference to the cited marks. By taking into account the device mark as a whole, I am of the



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11. For reasons set out above, these conclusions are unsustainable and the impugned order is set aside. By taking into account the nature of the device mark and the marks cited in response thereto, the application shall be accepted for



advertisement. Such acceptance shall, by way of abundant caution, be subject to the limitation that the appellant shall not claim exclusive rights over the words 'Kitchen Made', 'Tradition', 'Taste' or 'Trust', when used separately. It is needless to say that this order will not be binding on opponents, if any. There shall be no order as to costs.

05.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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