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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)CMA(TM)/94/2023
(OA/22/2020/TM/CHN)

Mr.Srinivasa Rao,
Trading as M/s.Sri Lakshmi Srinivasa Agencies,
Plot No.7, Road No.2, Andhrakesti Nagar,
Vanasthalipuram, Hyderabad 500 070. ... Appellant

-VS-

Senior Examiner of Trade Marks,
Intellectual Property Office,
IPO Building, GST Road, Guindy, Chennai 600 032,
Tamil Nadu, India. ... Respondent

PRAYER: Transfer Miscellaneous Appeal (Trade Marks) is filed under Section 91 of the Trade Marks Act, 1999, praying that the order dated 10.12.2019 of the Senior Examiner of Trade Marks in Application Number 3440973 in Class 31 be dismissed and the subject trade mark be allowed to proceed to registration.



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For Appellant : Mr.B.Karthik

For Respondent : Mr.N.Ramesh
Senior Panel Counsel

JUDGMENT

The appellant challenges an order dated 10.12.2019 by which Application No.3440973 for registration of the word mark 'DAILYFARM' was refused. The appellant applied for registration of the above mentioned word mark on 24.12.2016 in Class 31 on a 'proposed to be used' basis. By examination report dated 02.02.2017, an objection was raised under Section 9(1)(a) of the Trade Marks Act, 1999 (the Trade Marks Act), on the ground that the mark is devoid of any distinctive character. After a hearing on 24.10.2019, the application was rejected by drawing reference to Section 9(1)(b) of the Trade Marks Act. The present appeal arises under the above facts and circumstances.



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2. Learned counsel for the appellant submitted that the application was submitted on a "proposed to be used" basis. Prior to the date of hearing, the appellant had used the mark extensively and submitted evidence of use in the form of invoices, income tax returns and financial statements. Learned counsel also pointed out that the appellant obtained registration of a device mark containing the words 'DAILYFARM' as an essential feature. He also pointed out that the word mark 'DAILYFARM' was registered in Class 35 under Trade Mark No.3440975 with effect from 24.12.2016.

3. By referring to the examination report and impugned order, learned counsel submitted that the examination report referred to Section 9(1)(a) of the Trade Marks Act, whereas the impugned order referred to Section 9(1)(b) thereof. He further submitted that several marks containing the element 'DAILY' were registered by the Registrar of Trade Marks and that the mark 'DAILYFARM' is not descriptive of the goods in relation to which it is used. He pointed



out that the mark is used mainly in relation to goods such as green peas, grated coconut and sweet corn. Therefore, learned counsel submitted that the impugned order is liable to be set aside.

4. In response to these contentions, Mr.N.Ramesh, learned Senior Panel Counsel, submitted that the mark 'DAILYFARM' is descriptive of the goods in relation to which it is used. Consequently, he submits that it falls wholly within the ambit of Section 9(1)(b) of the Trade Marks Act.

5. The record discloses that the appellant previously obtained registrations in respect of a device mark containing the words 'DAILYFARM' with effect from 25.01.2017 in Class 30, which relates to food products. The record also shows that the appellant obtained registration of the word mark 'DAILYFARM' in Class 35, which pertains to wholesale and retail services. In effect, the appellant is the registered proprietor of the trade mark 'DAILYFARM' in respect of



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running wholesale or retail outlets. Such registrations are in force from December 2016.

6. The appellant has also placed on record evidence of use of the trade mark by way of invoices, financial statements, income tax returns and a certificate provided by the Chartered Accountant. It is noticeable that these invoices carry the device mark and not the word mark 'DAILYFARM'. Similarly, the packaging of the appellant's goods also bear the device mark. It appears that the appellant wants to protect the words 'DAILYFARM' from use by others in light of the adoption and use of these words as an essential element of the appellant's device mark since December 2016.

7. The conclusion in the impugned order that the word mark 'DAILYFARM' is descriptive cannot be brushed aside as totally devoid of merit. At the same time, it should be recognized that the appellant has used the words 'DAILYFARM', as part of its device mark, since 2016 and these words are not directly descriptive of the goods, such as green peas, grated coconut or garlic paste, in relation



to which the mark is used. The appellant has also obtained registration of the word mark 'DAILYFARM' in Class 35. The Registrar of Trade Marks has not raised any objections under Section 11 of the Trade Marks Act by citing conflicting marks.

8. When all these facts and circumstances are considered cumulatively, the impugned order calls for interference. Therefore, the impugned order is set aside and the Registrar of Trade Marks is directed to accept the application for advertisement subject to the condition that the appellant shall not claim exclusive use of either the words "DAILY" or "FARM", when used separately. It is also made clear that this order will not be binding on opponents, if any.

9. This appeal stands disposed of on the above terms. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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