



WEB COPY



(T)CMA(TM) Nos.159 & 179 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)CMA(TM) Nos.159 & 179 of 2023

[OA/30/2020/TM/CHN & (T)SR.No.8/2020/TM/CH]

Jawan Guarding Services Private Limited,
H.No.3/1/2/3/UAGF, Bolarum Road,
Lothukunta, Secundarabad, Rangereddi,
Telangana – 500 015, India.

... Appellant
in both appeals

Vs.

Senior Examiner of Trade Marks,
Intellectual Property Office,
Intellectual Property Office Building,
G.S.T. Road,
Guindy, Chennai – 600 032,
Tamil Nadu, India.

... Respondent
in both appeals

Common Prayer: Transfer Civil Miscellaneous Appeals (Trademarks) filed under Section 91 of the Trade Marks Act, 1999, praying that the orders dated 28.08.2018 and 19.08.2019 respectively of the Hon'ble Senior Examiner of Trade Marks in Application Numbers 4003432 and 4003431 respectively in Class 45 and Class 35 respectively, be dismissed and the subject Trade Mark be allowed to proceed to registration.



(T)CMA(TM) Nos.159 & 179 of 2023

WEB COPY

For Appellant : Mr.B. Karthik

For Respondent : Mr.S. Janarthanam
Senior Panel Counsel

COMMON JUDGMENT

Both these appeals were filed by Jawan Guarding Services Private Limited. In (T)CMA(TM) No.159 of 2023, an order dated 28.08.2018 rejecting Application Number 4003432 is assailed and in (T)CMA(TM) No.179 of 2023, an order dated 19.08.2019 rejecting Application Number 4003431 is assailed. Both the applications are for registration of the following device mark



in Class 45 and 35, respectively.

2. Learned counsel for the appellant submitted that the predecessor-in-interest of the appellant was a partnership firm constituted under the name and style of 'M/s.Javan Services' on 12.06.2012. Subsequently, a



(T)CMA(TM) Nos.159 & 179 of 2023

private limited company under the name and style of 'Jawan Guarding Services Private Limited' was formed on 03.03.2014 and the applications for registration of the device mark were filed on 21.11.2018. Learned counsel pointed out that evidence of use of the device mark was provided in the form of invoices issued by the appellant from the year 2016 onwards. In response to the applications, in the examination report, learned counsel pointed out that an objection was raised under Section 9(1)(b) of the Trade Marks Act, 1999 (the Trade Marks Act). In response thereto, learned counsel stated that a reply was issued stating that the mark is a device mark and that such mark consists of three components. The first component in the device being the emblem within which a man's face is drawn in maroon and white colours against a blue background; the second component being the three words 'JAWAN GUARDING SERVICES' written in blue colour; and the third component comprising the two words 'Customized Vigilance' written in maroon colour below the words 'JAWAN GUARDING SERVICES'. When considered as a whole, learned counsel contended that the mark is inherently distinctive and, in any event, acquired distinctiveness through use.



(T)CMA(TM) Nos.159 & 179 of 2023

3. Submissions to the contrary were made by Mr.S. Janarthanam, learned Senior Panel Counsel. He pointed out that the device mark is used in relation to the provision of security services. Consequently, the mark is clearly distinctive of the nature of services provided by the appellant. Since such distinctive mark fall within the scope of Section 9(1)(b) of the Trade Marks Act, he submitted that no interference is warranted with the impugned order.

4. Apart from referring to Section 9(1)(b) of the Trade Marks Act, the impugned order contains no reasons. The grounds of decision contain the conclusion that the mark consists exclusively of words which may serve in trade to designate the intended purpose of the services. Apart from the said conclusion, even the grounds of decision do not engage with the response of the appellant to the examination report and the statements therein that the mark is a device mark consisting of three components which, when viewed as a whole, make the mark distinctive. Evidence of use of the mark by the appellant prior to the application was also disregarded. For all these reasons, the orders impugned in these two appeals are unsustainable and are, hereby, set aside.



(T)CMA(TM) Nos.159 & 179 of 2023

WEB COPY

5. By taking into account the fact that the appellant's mark is a device mark consisting of about three components and by taking into account the evidence of use, I am inclined to direct that the mark be accepted for advertisement. This will, however, be subject to the limitation that the appellant claims no exclusive right over the words 'Jawan', 'Guarding' or 'Services', when used separately. This order shall not, however, be binding on opponents, if any. Both the appeals are allowed on the above terms.

11.09.2023

Index: Yes
Speaking Order
Internet: Yes
Neutral Citation: Yes

Sni

To

Senior Examiner of Trade Marks,
Intellectual Property Office,
Intellectual Property Office Building,
G.S.T. Road,
Guindy, Chennai – 600 032,
Tamil Nadu, India.



WEB COPY



(T)CMA(TM) Nos.159 & 179 of 2023

SENTHILKUMAR RAMAMOORTHY,J.

Sni

(T)CMA(TM) Nos.159 & 179 of 2023

11.09.2023