



WEB COPY



(T)CMA(TM)/186/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)CMA(TM)/186/2023
(OA/SR.7/2020/TM/CHN)

Anjay Bansal
No.201, Landmark Nest,
71, Nagavarapalya,
C.V.Raman Nagar,
Bangalore-560 093,
Karnataka.

... 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: Transfer Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trademarks Act, 1999, praying this Court that the order of the Hon'ble Senior Examiner of Trade Marks dated 17th September 2019 be dismissed and the subject Trade Mark under Application No.3900190 in Class 35 be allowed to proceed to registration.



WEB COPY



(T)CMA(TM)/186/2023

For Appellant : Mr.B.Karthik

For Respondent : Mr.M.Karthikeyan, SPC

JUDGMENT

The appellant challenges an order dated 17.09.2019 rejecting Application No.3900190 for the registration of the following device mark:



2. The appellant applied for the registration of the device mark extracted above on 27.07.2018 by asserting use since 17.05.2005 in respect of services relating to human resources. By examination report dated 27.08.2018, the Registrar of Trade Marks raised an objection under Section 9(1)(a) of the Trade Marks Act, 1999 (the Trade Marks Act) on the ground that the mark is non-distinctive. By reply dated 07.09.2018, the appellant asserted that the mark is distinctive and that it has been used since 2005. As a result of such



(T)CMA(TM)/186/2023

use, the appellant further asserted that the mark acquired distinctiveness. After a hearing on 17.09.2019, the impugned order was issued on the same date.

3. Learned counsel for the appellant invited my attention to the application and pointed out that the appellant asserted use since 17.05.2005. By referring to the evidence adduced by the appellant, learned counsel pointed out that invoices from July 2005 onwards were placed on record. With reference to the invoice at page 36 of the paper book, learned counsel pointed out that the relevant device mark is printed on the invoice. Learned counsel next referred to the description of the device mark at paragraph 5 of the appeal and pointed out that the device mark consists of four elements. The four elements being the word “people” written in an indigo-green colour; the word “source” written in green; the unique shape of the alphabet “o” in the word “source”; and such alphabet “o” being styled so as to resemble a magnifying glass with the image of a person within the



(T)CMA(TM)/186/2023

alphabet “o”. When viewed as a whole, learned counsel asserted that the trade mark is distinctive, and that, in any event, the said trade mark acquired distinctiveness because of use from the year 2005 till the date of application. He concluded by pointing out that the impugned order is unreasonable.

4. Learned counsel for the respondent submitted that Section 9(1)(b) of the Trade Marks Act sets out the absolute grounds for refusal of registration when the relevant trade mark consists exclusively of marks indicating the intended purpose of the relevant goods or services. Since the mark applied for is used in relation to the provision of human resources related services, he submitted that it falls within the scope of Section 9(1)(b).

5. On examining the application, it is evident that such application was filed by asserting use since 17.05.2005. As evidence of use, the appellant has placed on record several invoices. These



(T)CMA(TM)/186/2023

invoices are for the period commencing in July 2005 and ending in June 2019. As pointed out by learned counsel for the appellant, most of these invoices contain the appellant's device mark. The appellant has also placed on record its annual report for the financial year 2017 – 2018.

6. Section 9(1) of the Trade Marks Act also contains a proviso which enables the registration of a trade mark, if such trademark has acquired distinctiveness as a result of use. As correctly pointed out by learned counsel for the appellant, the appellant's trade mark consists of about four elements. The word “people ” has been written in an indigo-green colour; the word “source” has been written in green colour; the alphabet “o” in the word “source” has been written in a stylised manner so as to resemble a magnifying glass; and there is a pictorial depiction of a person within such alphabet “o” in the magnifying glass. When all these aspects are taken into consideration, the impugned order, which is unreasoned, is



(T)CMA(TM)/186/2023

unsustainable.

WEB COPY 7. Therefore, the impugned order is set aside and the application shall proceed to advertisement. It is, however, made clear that this order will not be binding on opponents, if any. This order is also subject to the condition that the appellant shall not be entitled to claim exclusive use in respect of any of the individual elements of the trade mark. (T)CMA(TM)/186/2023 is allowed on the above terms, without any order as to costs.

24.11.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

kj



WEB COPY



(T)CMA(TM)/186/2023

SENTHILKUMAR RAMAMOORTHY,J.

Kj

(T)CMA(TM)/186/2023
(OA/SR.7/2020/TM/CHN)

24.11.2023