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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th September, 2023

Date of decision: 13th September, 2023

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C.A.(COMM.IPD-TM) 146/2021

STP LIMITED

..... Appellant

Through: Mr Shivendra Pratap Singh and Mr
Navdeep Suhag, Advocates (M:
8826906894).

versus

REGISTRAR OF TRADE MARK

..... Respondent

Through: Mr Harish Vaidyanathan Shankar
CGSC with Mr Srish Kumar Mishra
Mr Sagar Mehlawat and Mr
Alexander Mathai Paikaday, and Mr
M Sriram, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant - STP Limited seeking setting aside of the impugned order dated 1st January, 2019 passed by the Hearing Officer (Senior Examiner of Trade Marks) whereby the Appellant's application has been refused for registration. The details of the application are as under:



Trade Mark	SUPER KARGARD
Trade Mark Application No.	2887870
Class	2
Goods	Paints; Anti corrosive coating for all types of automobiles.
User Claim	1 st July, 1996
Date of filing	23rd January, 2015

3. Mr Shivendra Pratap Singh, Id. Counsel for the Appellant submits that the impugned order merely rejects the Appellant's application on the ground that it is objectionable under Section 9/11 of the Trade Marks Act, 1999. However, in the Examination Report, the only objection under Section 9(1)(b) of the Trade Marks Act, 1999 was raised. It is submitted that the Appellant had submitted a reply to the Examination report vide its letter dated 27th October, 2016.

4. Id. Counsel for the Appellant submits that a perusal of the examination report would show that the only mark which has been cited in therein is the Appellant's mark KARGARD (Device) in class 2. The said mark has been granted registration vide registration certificate no. 2887867.

5. The Court has heard Id. Counsels for the parties and perused the record.

6. A perusal of the impugned order would show that the order dated 1st January, 2019 passed by the Hearing Officer (Senior Examiner of Trade Marks) is completely cryptic and merely rejects the application on the ground that it is objectionable under Section 9/11 of the Trade Marks Act,



1999. The said sentence from relevant part of the impugned order reads as under:

“ The trade mark applied for is objectionable under Section 9/11 of the Act. The application is accordingly refused.”*

7. In view of the fact that the mark ‘KARGARD’ has itself been registered in favour of the Appellant, the impugned order is not sustainable.

8. Accordingly, the Appellant’s application no. 2887870 for the mark ‘SUPER KARGARD’ in class 2 is permitted to proceed for advertisement. Let the same be advertised in the Trade Marks Journal within three months.

9. It is made clear that the present order would have no impact on opposition proceedings, if any, which may be filed against the application.

10. Accordingly, this appeal along with all pending applications is allowed in the above terms.

11. The Registry is directed to supply a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on the e-mail- llc-ipo@gov.in for compliance of this order.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 13, 2023

Rahul/kt