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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **C.A.(COMM.IPD-TM) 156/2021**

VIPAN SHARMA Appellant

Through: Mr.Gautam Panjwani, Adv.

versus

TRADEMARK OFFICE THROUGH ITS REGISTRAR, NEW DELHI Respondent

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

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

18.09.2023

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(Through Video-Conferencing)

1. *Vide* Application no. 2899018, dated 11 February 2015, the appellant applied for registration of the word mark "Skylark Institute of Travel" in respect of goods in Class 41 of the NICE classification of trade marks.

2. The impugned order dated 10 May 2019, which rejects the application, reads thus:

"O R D E R

An application for registration of trade mark consisting of word "Skylark institute of Travel" was filed by the aforesaid Applicant under application No 2899018 in respect of applied goods included in Class - 41. The application was examined and



examination report containing the objections to the acceptance of application for registration of trade mark was communicated to the Applicant. On the request of the Applicant, a hearing was fixed in this matter. Eventually on 11 February 2019, the application came up before me for hearing and the order was passed accordingly.

The present petition on form TM-M has been filed for review of the order dated 11 February 2019.

Advocate Sarthak appeared. Mark is objectionable U S.11. Similar mark with similar goods and prior user already on record. Hence, refused.

The request on form TM-M is accordingly Refused.

Sealed and signed at the Trade Marks Registry, Branch Delhi on dated : 10 May 2019.

(SHIKHA DEWAN)
SENIOR EXAMINER OF TRADE MARKS”

3. Mr. Vaidyanathan, learned Counsel for the respondent-Registrar, submits that, at the time when the impugned order was passed, the practice was to pass an order of rejection initially and to provide reasons for rejection, if sought by the applicant concerned, subsequently. As such, he seeks an adjournment in order to place the detailed reasons for rejection on record.

4. I do not see any purpose in acceding to the request. The impugned order dated 10 May 2019 invokes Section 11 and rejects the appellant's application on the sole ground that similar marks relating to similar goods with prior user were on record.

5. The existence, in the Register of Trade Marks, of similar goods or services bearing similar marks, having priority of user, does not



justify rejection of a request for registration of a trademark, unless there is an independent finding that, by reason of said similarity of the marks and the goods, there is likelihood of confusion on the part of the public. There is no such finding in the impugned order. The reasons, even if permitted to be adduced subsequently, cannot travel beyond the impugned order.

6. As such, it does not appear, therefore, that the authority which had rejected the appellant's application has correctly applied its mind to the ingredients of Section 11(1).

7. Accordingly, the impugned order dated 10 May 2019 is quashed and set aside.

8. Application no. 2899018 dated 11 February 2015 filed by the appellant is remitted for reconsideration to the competent officer in the office of the Registrar of Trademarks.

9. Let a *de novo* order be passed positively within four weeks from today, after granting an opportunity of hearing to the appellant for which purpose the appellant shall present itself before the concerned officer in the office of the Registrar of Trademarks on 26 September 2023.

10. The appeal stands disposed of in the aforesaid terms.

11. It is made clear that this Court has not expressed any opinion on



the entitlement or otherwise of the appellant to registration of the mark in question.

C.HARI SHANKAR, J

SEPTEMBER 18, 2023

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