



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-12-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

(T)CMA(TM) No. 189 of 2023

M/s. Freshtohome Foods Private Limited
Unit No. 201 to 204, 'A' Wing
No.1, 2nd Floor, Carlton Towers
Old Airport Road, Bangalore Urban,
Karnataka – 560 008

Appellant

Vs

The Registrar of Trade Marks
Trade Marks Registry Chennai.

Respondent

PRAYER

Appeal under Section 91 of the Trade Marks Act, 1999 seeking to

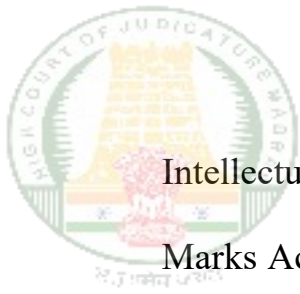
- Record and proceeding in the matter may kindly be called for
- The appeal be allowed with cost.
- That the order dated 26.04.2019 passed by the Registrar of Trade marks, Chennai, may kindly be set aside and application 3752349 be accepted and proceeded further according to law.

For Appellant: Mr.P.Magesh

For Respondent: Mr.G.Ilangovan
Central Government Standing Counsel

ORDER

This civil miscellaneous appeal, which was originally filed before the



Intellectual Property Appellate Board, Chennai under Section 91 of the Trade Marks Act, 1991 and subsequently got transferred to the file of this Court, has been filed against the order dated 26.04.2019 rejecting the application submitted by the appellant seeking for registration of the trade mark 'FRESH NOT FROZEN' included in class 35.

2. Heard the learned counsel appearing on behalf of the appellant and the learned Central Government Standing Counsel appearing on behalf of the respondent and perused the materials available on record.

3. The case of the appellant is that they have adopted the trade mark 'FRESH NOT FROZEN' in respect of their goods and services involving online retail store services featuring vegetarian, non-vegetarian, processed and unprocessed food stuff, fruits, vegetables and grains included in class 35. They submitted an application for registration of the said mark on 22.03.2016. According to the appellant, they have been continuously and uninterruptedly using the said mark from 22.03.2016.

4. The Trade Marks Registry objected the application under Section 9(1) (a), (b) and Section 11(1) of the Act. For the said objections, the appellant filed their reply on 09.03.2018. Thereafter, the objection was heard and it was refused by the impugned order dated 26.04.2019.

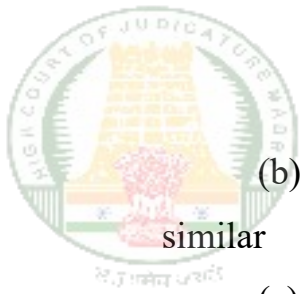


5. The learned counsel for appellant submitted that the trade mark for which the appellant had submitted application, is in no way deceptively similar to the registered mark 'FRESH N FROZEN'. Insofar as the existing mark is concerned, it is a word mark and it has been given for goods/wholesale and retail outlets and shops including the services relating to distribution, trading and marketing of chicken, mutton, fish, eaw, semi-cooked, full-cooked, confectionery, juice and soft drinks included in class 35. It was submitted that the term 'FRESH NOT FROZEN' is a general term and it is just diametrically opposite to the registered mark 'FRESH N FROZEN'.

6. On careful consideration of the submissions made on either side and on carefully going through the order passed by the respondent, it can be seen that there was already a registered trade mark carrying the name 'FRESH N FROZEN' included in class 35. The appellant is seeking for a trade mark 'FRESH NOT FROZEN' for similar products included in class 35. The application has been rejected on the ground that the trade mark sought for by the appellant is deceptively similar to the registered valid trade mark 'FRESH N FROZEN' included in class 35 in respect of identical services.

7. There are certain principles to be considered to decide the existence of deceptive similarity and they are:-

(a) the nature of the marks



(b) the degree of resemblances between the marks, phonetically or ideally similar

(c) the nature of goods in respect of which they are used as trademarks

(d) the similarity in the nature, character and performance of the goods of the rival traders

(e) the class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods

(f) the mode of purchasing the goods or placing orders for the goods and

(g) any other surrounding circumstances which may be relevant.

8. To properly appreciate the objection that was raised by the respondent, it will be relevant to take note of the trade mark that has already been registered as 'FRESH N FROZEN' and the trade mark that has been sought to be registered by the appellant i.e., 'FRESH NOT FROZEN'. Admittedly, both these marks in respect of similar food products have been included in class 35. On a cursory look at these two marks, it can be seen that the trade mark which the appellant had sought for, is certainly deceptively similar. It is not what meaning is being assigned by the words chosen by the appellant and the determining factor is whether it is deceptively similar. The class of customers who are likely to buy the goods with their reasonable mental faculty will be certainly misled on a first look of the trade mark that is sought for by the appellant, since the only letters that have been added by the appellant are 'OT' and every other word in the mark that has already been registered is available



even in the trade mark that is sought for by the appellant. The same being included in class 35 in respect of identical services, obviously, the decision taken by the respondent cannot be said to be illegal and it is clearly objectionable under Sections 9 & 11 of the Act. Accordingly, there is no ground to interfere with the same.

9. The learned counsel for appellant submitted that the appellant must be given liberty to submit a fresh application for a different trade mark and the same should not be rejected by citing this order. It is made clear that the application has been rejected only on the ground that the trade mark sought for by the appellant is deceptively similar to an already registered trade mark. Therefore, if the appellant submits application for an unobjectionable trade mark, obviously, it will be considered by the respondent on its own merits and in accordance with law.

10. In the result, this civil miscellaneous appeal is dismissed with the above observation.

18-12-2025

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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To

1. The Registrar of Trade Marks
Trade Marks Registry
Guindy, Chennai 600 032.

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**N.ANAND
VENKATESH J.**

SS

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