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

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Date of decision: 26th March, 2025

C.A.(COMM.IPD-TM) 20/2024

M/S. MOCEMSA CARE

.....Appellant

Through: Mr. Ankit Sahni and Mr. Chirag Ahluwalia, Advocates.

versus

THE REGISTRAR OF TRADE MARKS

.....Respondent

Through: Ms. Nidhi Raman, CGSC with Mr. Debasish Mishra, Advocate

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 against the impugned order dated 1st January, 2024 passed by the respondent, refusing the Trademark Application No.4852344 in Class



3 in respect of the mark on the ground that it is devoid of any distinctive character in terms of Section 9(1)(a) of the Trade Marks Act, 1999 (hereinafter referred to as "the Act").

BRIEF FACTS

2. Brief facts necessary for deciding the present appeal are as follows:



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- i. The appellant claims to be honest and *bonafide* adopter of the device mark , which is a unique and innovative amalgamation and juxtaposition of the words of a trademark in an eye catching arrangement. The appellant claims to have been using the said mark in respect of beauty, skin care and home fragrance products.
- ii. On 6th February, 2021, the appellant filed a Trademark Application bearing No.4852344 for the registration of the said mark in Class 3 in respect of goods viz. “Lip scrub, eye gel, face wash, shampoo, room freshener, linen freshener” claiming user since 20th November, 2020. Along with the application, the applicant also filed a user affidavit dated 18th December, 2020 along with a supporting invoice dated 20th November, 2020. The respondent *vide* examination report dated 19th February, 2021, raised objections under Sections 9(1)(a) and 9(1)(b) of the Act.
- iii. The appellant replied to the aforesaid examination report *vide* reply dated 30th November, 2021, rebutting the aforesaid objections.
- iv. A hearing notice dated 30th November, 2023 was issued to the appellant. Counsel for the appellant appeared at the hearing on 27th December, 2023 and made submissions.



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- v. *Vide* impugned order dated 1st January, 2024, respondent refused the Trademark Application No.4852344. The relevant extracts from the impugned order are set out below:

“The mark applied for registration is objectionable under S. 9(1)(a) of the Trade Marks Act 1999, as it is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person because it is a common surname/personal name/...

It is noticed that the Applicant has brought three common and general words along with an exclamation mark in between the words which are used in day-to-day life by the common general public due to which no one can claim individual ownership for these words. Nothing seems to be invented by the Applicant on his own efforts. Further, it is also noticed that the Applicant kept only one invoice dated 20.11.2020 which was his date of user claimed and printed and repeated the same thrice in order to show more in number of invoices. It seems that he has no any other invoice except this one because if he would have possessed, he would have submitted along with reply to Examination Report which he has not done. In the light of single invoice, it cannot be told that the mark had acquired popularity among the general public and acquired the distinctiveness due to which it is not possible to grant registration. The claim of the Applicant that some of the Applicants which are allowed for Registration by the Registry cannot be considered here because the circumstances in which they are accepted may be different one which cannot be applied here. Hence, the mark is refused for registration under Section 9.”

- vi. Aggrieved by the aforesaid, the present appeal came to be filed.

PROCEEDINGS IN THE PRESENT APPEAL

3. Notice was issued by this Court in the present appeal *vide* order dated



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8th April, 2024.

4. The respondent was given time to file reply/ written synopsis on multiple dates, however, no reply has been filed. Ms. Raman submits that she will argue on the basis of the record.

5. Today, Mr. Ankit Sahni, counsel appearing on behalf of the appellant submits that the impugned order has been passed without taking into consideration the submissions made by the appellant in the reply filed and during the hearing.

6. Ms. Nidhi Raman, CGSC, appearing on behalf of the respondent submits that one of the main reasons for refusing the Trademark Application was that the appellant had filed only one invoice in support of its user.

7. In response to the aforesaid submission, Mr. Sahni submits that in the examination report, no objection with regard to the invoice was raised.

ANALYSIS AND FINDINGS

8. I have heard the counsel for the parties and perused the record.

9. The impugned order has refused the subject application on the ground that the appellant has brought the common general words along with an exclamation mark in between the words, which are used in day to day life by common general public.

10. I am unable to accept this reasoning. In my view, even though the appellant has used three common words of the English language, however, the application has been filed for a device mark in which the aforesaid words have been used in a composite stylized manner. When viewed as a whole, it appears to be a distinctive mark.

11. The appellant has also placed on record several registrations granted



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by the Trade Marks Registry using common words though arranged in a stylized manner which have been granted registration. The printout of e-register details of the said trademark registrations have been filed along with the petition as Document 6.

12. Counsel for the appellant has correctly submitted that distinctiveness of a combination mark cannot be negated by dissecting the mark. The same has to be assessed as a whole instead of proving its components to be distinctive by itself.

13. Insofar as the appellant filing only one invoice is concerned, it is to be noted that the subject application was signed by the appellant on 26th December, 2020 and it claimed user from 20th November, 2020. Therefore, the period of prior user was only about a month. In such a short span of time, the appellant could not have filed multiple invoices to show prior user.

14. Pertinently, the objection with regard to sufficient number of invoices not having been filed by the appellant was never taken in the examination report. If such an objection had been taken in the examination report, the appellant would have filed other available invoices with it.

15. To be noted, along with the present appeal, the appellant has also filed other invoices evidencing its user of the mark from 20th November, 2020.

16. Based on the discussion above, I am of the considered view that the impugned order is unsustainable and is liable to be set aside.

17. Accordingly, the appeal is allowed and the impugned order dated 1st January, 2024 is set aside.

18. The Trade Marks Registry is accordingly directed to proceed with the advertisement of the subject trademark application as per proviso to Section



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20(1) of the Act. Let the same be advertised within a period of three months.

19. If there is any opposition to the said application, the same shall be decided on its own merits without being affected by the observations made herein.

20. The Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

AMIT BANSAL, J

MARCH 26, 2025

Vivek/-