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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21st July, 2026

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C.A.(COMM.IPD-TM) 8/2026 and I.A. 3697/2026

ADS SPIRITS PVT. LTD.

.....Appellant

Through: Mr. Ankit Sahni, Ms. Kritika Sahni,
Mr. Chirag Ahluwalia, Mr. Mohit Maru and Ms.
Aparna Sharma, Advocates.

versus

THE REGISTRAR OF TRADE MARKS

.....Respondent

Through: Mr. Gaurav Barathi, SPC with Mr.
Vikrant Malwal, Government Pleader and Mr.
Chirantan Priyadarshan, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This appeal is filed by the Appellant under Section 91 of the Trade Marks Act, 1999 ('1999 Act') challenging impugned order dated 30.10.2025 passed by the Respondent rejecting Trade Mark Application No. 5514779 filed by the Appellant for registration of the mark OFFER in Class 33 invoking Section 9(1)(a) of 1999 Act.
2. Case of the Appellant as pleaded in the appeal is that the Appellant company was incorporated in 2010 and is part of the ADS Group of Companies, which is one of the fastest growing liquor conglomerates in Indian alcohol beverage space and is engaged in the business of manufacturing, marketing, trading and selling liquor products for more than a decade and has built a stellar reputation and goodwill in country liquor and



Indian Made Foreign Liquor market segments. Products of the Appellant are widely sought by general public and within the trade circles, which has led to organic and consistent growth in Appellant's retail network across India and as in March, 2025, Appellant aggregated total liquor sale of more than Rs. 7,500 crores. Appellant has launched a range of spirit brands to cater to various price brackets in the Indian market and is creator of iconic brands like Royal Green Whisky, Double Blue Whisky, Episode Gold Whisky, High Impact Deluxe Whisky etc.

3. It is stated that Appellant is an honest and *bona fide* adopter of trademark OFFER in respect of alcoholic beverages and alcoholic preparations for making beverages and to secure statutory rights in the mark, Appellant filed Trade Mark Application bearing no. 5514779 on 03.07.2022 seeking registration in Class 33 in respect of goods "*alcoholic beverages, except beers; alcoholic preparations for making beverages*", on 'proposed to be used' basis. The mark is arbitrary and inherently distinctive and capable of distinguishing the goods of the Appellant from the goods of others.

4. It is stated that Respondent issued Examination Report dated 18.11.2022 and raised an objection under Section 9(1)(a) of 1999 Act stating that the mark OFFER was a common surname/personal name/geographical name/ornamental or a non-distinctive geometrical figure and as such not capable of distinguishing the goods or services from those of others. Reply dated 14.12.2022 was filed to the Examination Report by the Appellant on 26.12.2022 rebutting the objection raised, whereafter Respondent issued notices for hearings on 16.03.2024, 25.06.2024, 21.10.2024 and 02.04.2025. On 24.06.2025, Appellant gave additional reply before the hearing



scheduled on 25.06.2024 citing case law as also giving a list of registered marks which had the word OFFER with prefixes/suffixes, however, without considering the submissions and the law, Respondent passed the impugned order dated 30.10.2025 refusing registration.

5. Learned counsel for the Appellant urged that the impugned order is illegal, perverse and non-speaking and shows complete non-application of mind and hence, untenable in law. Respondent has not considered a single submission of the Appellant in the reply dated 14.12.2022 to the Examination Report and the additional reply. Documents/judgement cited including the list of earlier registered composite marks with word OFFER which demonstrated that OFFER is not inherently non-distinctive, have been totally overlooked. It is settled that being a quasi-judicial authority, Registrar of Trade Marks is bound to consider all relevant facts, submissions and documents placed on record as also pass a reasoned and speaking order showing due application of mind. Passing stereotyped orders, as in this case, defeats the very purpose of granting opportunity to file response to the objections raised in the Examination Reports.

6. It was argued that Respondent has erred in refusing registration on the ground that in general parlance, word OFFER finds its usage while demanding a discount on purchase of any goods or services and being devoid of 'uniqueness' cannot be registered, owing to a statutory proscription under Section 9(1)(a). Respondent applied the wrong test inasmuch as Section 9(1)(a) bars registration if the applied mark is devoid of distinctive character, that is to say, not capable of distinguishing the goods/services of one person from those of another person and does not require uniqueness/novelty/inventiveness as pre-condition of registration.



The objection indicates the perception of the Respondent that the mark OFFER is inherently promotional, which is a wrong approach as the consideration ought to have been whether in relation to the goods i.e ‘alcoholic beverages, except beers; alcoholic preparations for making beverages’, OFFER is capable of performing the function of a trademark as a source identifier. A mark may be generic in the context of one category of goods but may be arbitrary for the other, depending on the nature of the goods. OFFER is no doubt an ordinary English word, yet in respect of alcoholic beverages it is arbitrary and seen in that context, when displayed on the liquor bottle, consumers will perceive it is a trademark/brand rather than as incomplete promotional statement because even otherwise ‘offer’ is not used as a standalone word while offering discounts. Therefore, provisions of Section 9(1)(a) do not impede the registration of mark OFFER for the goods in question in the instant case. Moreover, Registrar of Trade Marks has in the past granted registrations to trademarks such as OFFER SALE, offerME, Grab Offers, OFFERUP etc. and this submission of the Appellant also has been overlooked.

7. It was contended that Respondent has failed to appreciate that under Section 9(1)(a) of 1999 Act, ordinarily a finding of non-distinctiveness cannot be rendered by the Registrar if anyone else has not used a mark similar to the applied mark, howsoever innocuous the mark may be, as held by this Court in *Abu Dhabi Global Market v. Registrar of Trademarks, Delhi, 2023 SCC OnLine Del 2947*. The impugned order is on a much worse footing as Respondent has not even rendered a finding of non-distinctiveness and has examined the mark on an unknown parameter of ‘uniqueness’ and this completely vitiates the order.



8. Learned counsel placed reliance on the judgment of the Division Bench of this Court in ***Oswaal Books and Learnings Private Limited v. Registrar of Trade Marks, 2026 SCC OnLine Del 2362***, where the mark in question was 'ONE FOR ALL' and Appellant had sought registration in Class 16 for educational books/publications, which was refused by the Registrar under Section 9(1)(a) on the ground that the mark ONE FOR ALL was a common non-distinctive expression and Appellant had failed to prove that the mark has acquired distinctiveness/secondary meaning and learned Single Judge had upheld this finding. The Division Bench held that the applied mark could not be associated with the trade or business of books or any other goods/services in Class 16 and is used when a singular remedy is capable of dispensing with the requirement of multiple or parallel processes and is thus, not a common-way or slogan used for goods in Class 16 and moreover, there was no objection under Section 11 of 1999 Act.

9. Reliance was also placed on the judgment of this Court in ***Teleecare Network India Pvt. Ltd. v. Asus Technology Pvt. Ltd. and Others, 2019 SCC OnLine Del 8739***, where the Court was deciding an application for ad interim injunction under Order XXXIX Rules 1 and 2 CPC for restraining the Defendants from selling mobile phones/accessories under the trademark ZENFONE alleged to be identical/deceptively similar to trademarks ZEN and ZEN MOBILE, amounting to infringement and in that context, discussed the term generic and the different categories of marks such as descriptive, suggestive and arbitrary. It was held that a word may be generic *qua* a specific business or trade but not across the board for all businesses or trade and consequently, though ZEN is a generic word *qua* a school of Buddhism, yet is not generic with regard to mobile phones and tablets as the



word has no connection or correlation with the said goods and hence, was arbitrary and entitled to protection without proof of having acquired secondary significance. For the same legal proposition *inter alia* with respect to the nature of marks *qua* the goods for which they are sought to be registered and the decree of protection granted to an arbitrary mark vis-à-vis descriptive mark, reliance was placed on the judgments in ***Mohd. Rafiq & Others v. Modi Sugar Mills Ltd., 1971 SCC OnLine Del 190***; ***T.V. Venugopal v. Ushodaya Enterprises Limited and Another, (2011) 4 SCC 85***; ***Evergreen Sweet House v. Ever Green and Others, 2008 SCC OnLine Del 1665***; ***Shivani Vig Kapoor and Another v. Registrar of Trademarks, 2023 SCC OnLine Del 8267***; ***Kapil Goyal v. Registrar of Trade Marks, 2026 SCC OnLine Del 125***; and ***Ashim Kumar Ghosh v. Registrar of Trade Marks, 2025 SCC OnLine Del 8615***. It was thus urged that the mark OFFER being arbitrary and distinctive *qua* alcoholic beverages and alcoholic preparations in Class 33 and capable of distinguishing Appellant's goods from those of the others, deserves to be registered.

10. Mr. Gaurav Barathi, learned SPC appearing for the Respondent opposes the appeal and defends the impugned order. It was argued that there is no legal infirmity in the order and adequate reasoning is given by the Respondent to refuse registration of the mark OFFER. There is no law which mandates that the reasoning must run into several paragraphs and it is enough if the application of mind is reflected from the order. OFFER is an ordinary English word and it is rightly held by the Respondent that in common parlance, the word is used when asking for a discount while purchasing goods or availing of services and hence, is not unique. Section 9(1)(a) proscribes registration of a trademark, which is devoid of any



distinctive character and incapable of distinguishing goods of the applicant from those of another person. In ***Venus Worldwide Entertainment Private Limited v. Popular Entertainment Network (Pen) Private Limited and Another, 2023 SCC OnLine Del 5066***, this Court held that the word KHILADI was a generic word of non-distinctive character meaning player in English language and not a coined term, so as to deserve high degree of protection to the mark. Therefore, by adopting the word KHILADI as a part of device mark, assuming that it was open to the Plaintiff's to claim its exclusive use, Plaintiff ran the risk of a third-party using the same mark.

11. Further, reliance was placed on the judgment in ***IHHR Hospitality Pvt. Ltd. v. Bestech India Pvt. Ltd., 2012 SCC OnLine Del 2713***, where the Division Bench was considering an appeal filed against the order of the learned Single Judge declining injunction against the Respondent from using the name 'Bestech Park View Ananda' for its apartments in a group housing complex, alleging that the mark was deceptively similar to Appellant's registered mark ANANDA. Division Bench dismissed the appeal on the ground that Appellant had chosen to obtain registration of a word, which is not only *publici juris* but also closely associated by large number of people in India as indicative of an abode or a place of peace where the mind, body and soul can relax and rejuvenate and in this background, Appellant ought to have led evidence of secondary distinctiveness, which it failed to do. Reliance was also placed on the judgment of the Supreme Court in ***Pernod Ricard India Private Limited and Another v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701***, where it was held that trademarks which are generic, descriptive or laudatory, particularly, those commonly used in a given trade, cannot be monopolized by any one proprietor and even where



such terms form part of a registered mark, protection does not extend to those elements *per se*, unless it is affirmatively shown that they have acquired secondary meaning. The rival trademarks in the said case were BLENDERS PRIDE and LONDON PRIDE and the Supreme Court held that the word 'PRIDE' is a laudatory and commonly used English term, typically employed to suggest notions of excellence etc., and is commonly used in alcoholic beverages industry such as McDowell's Pride, Highland Pride, Royal Pride and Pride of India, all incorporating the word PRIDE.

12. Heard learned counsels for the parties and examined their rival contentions.

13. The issue under consideration in this appeal is in a narrow compass. Appellant applied for registration of the mark OFFER in Class 33 for goods "*alcoholic beverages, except beers; alcoholic preparations for making beverages*". Respondent issued an Examination Report raising objections under Section 9(1)(a) stating: '*the marks is a common surname/personal name/geographical name/ornamental or a non-distinctive geometrical figure and as such it is not capable of distinguishing the goods or services of one person from those of others.*'. The objection is rather strange and perhaps a standard pre-drafted format including every possible objection to reject registration without specifying whether the mark OFFER was perceived as a name of a person/surname or a geographical name or a geometrical figure. This is clearly indicative of non-application of mind even at the stage of issuing the Examination Report.

14. The non-application of mind and arbitrariness on the part of the Respondent is compounded by the fact that even in the impugned order dated 30.10.2025, refusal for registration under Section 9(1)(a) is premised



entirely on the ground that in common parlance, word OFFER is used for demanding a discount while purchasing goods or seeking services and is devoid of 'uniqueness'. For ready reference, Section 9(1)(a) of 1999 Act is extracted hereunder:-

“(1) The trade marks—

(a) which are 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;”

15. Before proceeding to examine the impugned order with respect to its legal validity on the touchstone of Section 9(1)(a), it is pertinent to note that the impugned order is wholly non-speaking, unreasoned and cryptic as it does not deal with any submission of the Appellant in the reply to the Examination Report as also additional reply submitted on 24.06.2024 in response to hearing notice dated 26.02.2024, wherein Appellant provided a list of 31 marks registered by the Registrar of Trade Marks in different classes using the word OFFER with a prefix or suffix, including the word OFFER SALE. Appellant also referred to the judgment of this Court in ***Abu Dhabi (supra)***, for the proposition that as long as others do not use the mark applied for or any mark similar thereto, no finding of non-distinctiveness can ordinarily be returned, however, even the judgement has also not been considered.

16. It is trite that an order which suffers from lack of reasoning and fails to address specific submissions made in response to First Examination Report ('FER') is untenable in law. As a *quasi-judicial* authority, Registrar of Trade Marks is under a mandate of law to take into consideration all material placed before him as also consider all issues flagged and judgments relied on, at least to the extent they are relevant and pass a speaking and



reasoned order. Importance of a reasoned order indicating cogent reasons, which weighed with the Registrar to come to a conclusion for refusing registration, cannot be overemphasized. The Bombay High Court in ***I Am the Ocean, LLC v. Registrar of Trade Marks, 2023 SCC OnLine Bom 3341***, has observed that *albeit* detailed submissions were placed on record by the Petitioner in support of its plea to register the applied mark but the impugned order makes no reference to them while holding that the cited marks were identical/similar. The impugned order also lacked cogent reasons. Significantly, the Court also noted that in several matters in the past, submissions and documents, which form part of the replies before the Registrar of Trade Marks, were not considered. The least expected of an adjudicating officer is to peruse the reply and extend the bare courtesy of application of mind and not doing so is complete abdication of *quasi-judicial* functions vested in the Registrar under 1999 Act and 2017 Rules. The same view has been taken by this Court in ***Psychotropic India Limited v. Registrar of Trade Marks, 2026 SCC OnLine Del 446***; ***ABC Mechanicals v. ABC Trade Agencies and Ors., MANU/DE/7663/2025***; and ***Cargill Incorporated v. The Registrar of Trade Marks, C.A. (COMM.IPD-TM) 43/2024***, decided on 07.08.2025, reiterating that an order passed without appreciation of documents and submissions on record as also an order which discloses no reasons and is cryptic cannot be sustained in law. The impugned order in the instant case is unreasoned, cryptic and fails to consider the submissions made and documents filed by the Appellant and defeats the purpose of calling for a response to the Examination Report and thus deserves to be quashed on this ground alone.

17. There is yet another serious legal infirmity in the impugned order,



which in my view, vitiates the order. Application of the Appellant for registration of the mark OFFER has been refused under Section 9(1)(a), categorically stating that the word is devoid of ‘*uniqueness*’. Section 9 of 1999 Act provides absolute grounds for refusal of registration and plain reading of sub-Section (1)(a), which is extracted in the earlier part of the judgment, shows that the provision proscribes registration of the applied mark if it is devoid of any ‘*distinctive character*’ and the phrase has been explained thereafter, to mean not capable of distinguishing the goods or services of one person from those of another person. I am unable to discern the concept of ‘uniqueness’ in the statutory provision and therefore, as the Appellant rightly flags, a wrong test was applied by the Respondent to determine if the mark could be registered.

18. It needs no reiteration that trademarks are classified in four categories: (a) arbitrary, fanciful and invented marks; (b) suggestive marks; (c) descriptive marks; and (d) generic marks. The term ‘distinctiveness’ and its spectrum has been the subject matter of many decisions. In ***Disruptive Health Solutions Private Limited v. Registrar of Trade Marks, 2022 SCC OnLine Del 2002***, this Court was *in seisin* of an appeal against an order passed by Senior Examiner of Trade Marks refusing registration of the mark HEALTHSKOOL under Section 9(1)(b), holding that the mark was descriptive. Case of the Appellant was that the mark was not descriptive in respect of products falling in Class 10 being bandages, medical and surgical products etc. In this context, the Court observed that the general rule regarding distinctiveness is that the mark is capable of being protected either if it is inherently distinctive or has acquired distinctiveness through secondary meaning and in the first category of marks are the arbitrary,



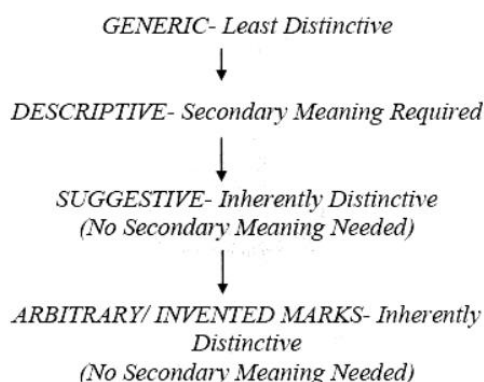
fanciful and invented marks which have absolute distinctiveness. Suggestive marks can also be registered due to their inherent distinctiveness but descriptive marks can be registered only if their secondary meaning is established. Therefore, nature of the mark is required to be considered while testing whether the mark will proceed for registration. Relevant paragraphs from the judgment are as follows:-

“7. Clearly, the Ld. Senior Examiner seems to have erred in law while applying the standard required for registration of marks. It is the settled position in law that trademarks can be of various categories:

- i. Arbitrary, fanciful and invented marks,*
- ii. Suggestive marks,*
- iii. Descriptive marks,*
- iv. Generic marks.*

8. The spectrum of distinctiveness of marks has been the subject matter of various decisions. This Court in Bata India Limited v. Chawla Boot House, (2019) 259 DLT 292 held as under:

“26. The spectrum of distinctiveness of marks clearly explains how distinctiveness of marks is to be judged. The spectrum as explained in McCarthy on ‘Trade Marks and Unfair Competition’¹, can be illustratively depicted as below:



*27. Even if one considers the nature of the mark ‘POWER’, it cannot be held to be a descriptive mark. As the well-known author Mr. J. Thomas McCarthy, in the treatise on ‘Trademarks and Unfair Competition’², opines, **the question as to whether the mark is descriptive or suggestive, can be based on the following tests:***

- a) Degree of imagination required to connect the mark with the product; and**



b) The competitor's need to use the mark.”

9. A *Id.* Single judge of the Bombay High Court in *People Interactive (India) Private Limited v. Vivek Pahwa*, (2016) 68 PTC 225 (Bom) has summed up the test of distinctiveness in the following words:

“11. There are two issues here : first, the matter of acquisition of a ‘secondary meaning’; and, second, whether a domain name always assumes the features of a trade mark. As to the first, in *Indchemie* - a decision that does not, in my view, support Mr. Khandekar at all - Gupte J referenced *Miller Brewing Company v. G. Heileman Brewing Company Inc.*³ and noted the ‘spectrum’ of degrees of distinctiveness : (1) generic or commonly descriptive; (2) merely descriptive; (3) suggestive; (4) arbitrary or fanciful. Generic or commonly descriptive words - examples such as ‘necktie’, ‘plastic’, ‘soda’, ‘perfect’, ‘best’, ‘No. 1’ come to mind - are used to name or describe the goods in question. These can never become trade marks on their own. They never acquire distinctiveness or a secondary meaning. They do not tell one man's goods from another's. They do not indicate origin. **An expression in the second category, a merely descriptive term, is often used to describe some particular characteristic or ingredient: ‘airtight’, perhaps. Ordinarily, even these are not registrable unless they have acquired a secondary meaning and refer exclusively to one particular trader's goods. In the third category we have suggestive words. These only hint at a feature or a specialty. The consumer must, in his mind, make the necessary link between the word and the goods. This class of expression requires no proof of acquisition of a secondary meaning to proceed to registration; it may, however, be hedged with a disclaimer regarding the manner of use. A wholly arbitrary or fanciful word is always registrable, and it always separates or distinguishes one person's goods from another's.**

12. As a general rule, it seems to me that the principle is of obviousness. The degree of distinctiveness, and, therefore, the possibility of registration as a trade mark, is inversely proportional to the degree of obviousness : the more obvious the word, the less the degree of distinctiveness and the chances of its registration. I use the word ‘obvious’ here to mean not ‘evident’ but commonplace.”

10. The general rule regarding distinctiveness is that a mark is capable of being protected if either it is inherently distinctive or has acquired distinctiveness through secondary meaning. In the spectrum of distinctiveness, the first category of marks is of arbitrary, fanciful and invented marks which is of absolute distinctiveness. Similarly, suggestive marks can also be registered due to their inherent distinctiveness. Descriptive marks can be registered as trademarks provided secondary



meaning is established. Insofar as descriptive marks are concerned, just because some portion of the mark may have some reference or indication as to the products or services intended for, the same may not be liable to be rejected straightaway. In such a case, the merits of the marks would have to be considered along with the extent of usage. Other registrations of the applicant would also have a bearing on the capability of the mark obtaining registration. The owner of a mark is always entitled to expand the goods and services, as a natural consequence in expansion of business.

11. The test which is applied by the ld. Senior Examiner in the impugned order is not in consonance with the settled legal position set out above. The spectrum of distinctiveness has to be considered while examining the applications which come up for registration before the Trade Mark Registry.”

19. Clearly, in the present case, Respondent has failed to enter into the exercise of determining whether the applied mark OFFER is distinctive *qua* alcoholic beverages. It cannot be disputed that distinctiveness cannot be tested or determined in a vacuo and must be seen relative to the goods for which the applied mark is sought to be registered inasmuch as a trademark can be descriptive *qua* a certain category of goods but may be distinctive *qua* another category, as rightly flagged by the Appellant and in this context, I may allude to the passage from **Mohd. Rafiq (supra)** as follows:-

“We are unable to accede to the contention that the word “SUN” used in respect of the lanterns manufactured by the respondent is a laudatory term having reference to the character and quality of those lanterns. It is no doubt true that the rays of sun dispel darkness and lanterns too are used for dispelling darkness, it does not follow from that that the use of trade mark “SUN” for the lanterns has reference to the character and quality, of those lanterns. The reference to the character and quality, in our opinion, should be direct and plain and not remote and far-fetched. Likewise, the word, which is sought to be construed as laudatory, should have obvious significant of praise, and not one out of which an inference of praise has to be spelt out by a laboured process. Sun is the body which is the gravitational centre and source of light and heat to our planetary system. The element of praise is neither self evident in the word “SUN” nor can the said word be considered to be descriptive of the character or quality of the lanterns. A contrary view must necessarily result in stretching the connotation of the word “sun” to limits which, in our opinion, are



impermissible. We, therefore, find it difficult to hold that the word “sun” is inherently incapable of being distinctive of the lanterns manufactured by the respondent. In the matter of The Eastmen Photographic Materials Company, Limited and The Comptroller-General of Patents, Designs and Trade Marks, 1898 A.C. 571 (5), the House of Lords held that the word “Solio” when used in respect of photographic paper was capable of registration as a trade mark. The contention that the word indicated the character or quality of the goods was repelled.”

20. Recently, in **Oswaal Books (supra)**, the Division Bench set aside the judgment of the learned Single Judge, wherein it was held that the phrase ‘ONE FOR ALL’ was a common, laudatory slogan, clearly suggestive of the applicant’s intention to project its books as a universal solution for various academic needs and hence descriptive, conveying that applicant’s books are suitable for everyone, across all exams and boards. Division Bench observed that the applied mark ONE FOR ALL cannot in any manner be associated with the trade/business of books/service related to Class 16 and the mark is used when a singular remedy is capable of dispensing with the requirement of multiple or parallel processes. Class 16 covers tangible, printed and paper-based goods and the applied mark is not a common-way or slogan to describe goods in Class 16 and moreover, there was no objection raised under Section 11 to showcase commercial use of any identical/deceptively similar mark. It was further observed that the applied mark did not evoke a connect in the mind between the mark and the books, directly or unequivocally and thus satisfied the requirement of the statute for registration.

21. In **Evergreen Sweet House (supra)**, this Court held that Plaintiff’s word mark EVERGREEN, was neither descriptive nor suggestive of the products/services offered. EVERGREEN does not readily conjure up the



image of sweets and the two words used in conjunction with each other, naturally lead the mind onto the green vista or an association with the habitat or environs and is thus arbitrary in relation to sweets and confectionery. In ***Vineet Kapur v. Registrar of Trade Marks, 2025 SCC OnLine Del 2657***, the applied mark '2929' was held to be arbitrary in respect of the goods in question i.e., cosmetics and skincare and capable of distinguishing the goods of one manufacturer from the others such that the public will immediately correlate the mark with the source of a particular manufacturer. It was also observed that the mark is not ordinarily used in the trade of cosmetics and skincare and does not in any manner, directly or indirectly, describe the goods. In ***Mankind Pharma Limited v. Registrar of Trade Marks, 2022 SCC OnLine Del 1507***, challenge was laid by the Appellant to an order of the Senior Examiner of Trade Marks refusing registration of the word mark DON'T WORRY in Class 03 for goods being bleaching preparations and other substances used for laundry, cleaning, polishing and soaps, perfumery, essential oils, cosmetics etc. The Examiner was of the view that the mark was descriptive in nature and shows the intended purpose. Allowing the appeal, this Court held that the application on 'proposed to be used' basis could not be rejected on the ground that the words DON'T and WORRY are devoid of distinctive character inasmuch as the mark will be an arbitrary or a suggestive mark in respect of the goods in question.

22. Having considered the aforesaid judgments and the impugned order, I am of the view, that Respondent has applied a wrong test for determining whether the mark OFFER was registrable inasmuch as Section 9(1)(a) of 1999 Act does not recognise or require the applied mark to be 'unique' and proscribes registration of a mark which is devoid of distinctive character.



The provision does not leave the concept of distinctiveness nebulous and goes on to explain that a mark is non-distinctive if it is incapable of distinguishing the goods/services of the applicant from goods/services of others. Therefore, even a common English word used daily may become distinctive of goods it has no connection with. As held in several judgements, the test is the extent to which the imagination must be strained to draw a connect between the mark and the goods and if there is no connect comes to the mind, such as in the case of ivory to soaps, gap to clothes, the mark is arbitrary. However, Respondent has not even entered into the exercise of examining the mark OFFER on this test and has refused registration under a misconception that the applied mark must be unique.

23. In fact, even the finding of the Respondent that OFFER indicates a discount and hence not unique is also not totally correct. Offer and discount are not synonymous. An offer is a proposal or invitation to transact. Discount is to reduce the price. Product may be offered for sale without discount and it is common knowledge that the word 'offer' is ordinarily not used as a standalone word when the message is to give a discount and is often qualified with words 'special', 'limited', 'exclusive', 'holiday'.

24. Learned counsel for the Respondent has relied on judgements to justify the impugned order. I am of the view that none of them are applicable for the simple reason that Respondent has not applied the correct test under Section 9(1)(a). Be that as it may, in *Venus Worldwide (supra)*, the mark KHILADI was found to be generic and non-distinctive and used in at least 40 films/TV shows in the past. In *IHHR Hospitality (supra)*, similar was the position with the mark ANANDA and the Division Bench held that a large mass of people in India associated the word with abode or a place of peace.



In *Pernod Ricard (supra)*, the Supreme Court held that the word PRIDE was of common usage in the alcoholic beverages industry itself and referred to several brands using the word as part of their trademark.

25. Therefore, in my view, the application of the Appellant requires a fresh consideration, keeping in view the parameters of Section 9(1)(a) and testing the distinctiveness of the mark OFFER in relation to the alcoholic beverages in respect of which the registration is sought. Accordingly, the impugned order dated 30.10.2025 is quashed and set aside. Respondent is directed to reconsider the application bearing no. 5514779 on 03.07.2022 filed by the Appellant for registration of the mark OFFER in Class 33 for “*alcoholic beverages, except beers; alcoholic preparations for making beverages*”. The decision shall be taken within four months from today after granting opportunity of hearing to the Appellant and considering the replies/documents on record.

26. Appeal is disposed of in the aforesaid terms along with pending application, making it clear that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J.

JULY 21, 2026/YA