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

+ **C.A.(COMM.IPD-TM) 71/2025**

LUCY GROUP LTD

.....Appellant

Through: Ms. Anju Agrawal, Ms. Sruthi Venugopal and Ms. Vidhi Gupta, Advocates.

versus

THE REGISTRAR OF TRADEMARKS

.....Respondent

Through: Ms. Nidhi Raman, CGSC with Mr. Om Ram and Ms. Nikita Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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27.03.2026

1. This appeal is filed on behalf of the Appellant under Section 91 of the Trade Marks Act, 1999 ('1999 Act') read with Rule 156 of the Trade Marks Rules, 2017 ('2017 Rules') for setting aside the impugned order dated 17.04.2025 passed by the Respondent, whereby Respondent has refused registration of trademarks under Application No. 5247072 dated 14.12.2021 in Class 09.

2. As per the case out in the appeal, Appellant participated in the Trade Event Elecrama in Bengaluru on 13.02.2016 and used the mark GEMINI for the first time in India to promote and display products to its potential customers and business associates. On 16.06.2021, Appellant filed a Convention Trademark Application No. UK00003656071 in Great Britain Trademark Office seeking registration of the mark GEMINI. On 14.12.2021, Appellant also filed TM-Application No. 5247072 with the Respondent for registration of the mark GEMINI in India under Class 09 as convention application.



3. It is stated that on 04.01.2022, Examination Report ('ER') was issued by the Respondent objecting to the application under Section 11(1) of 1999 Act citing four prior marks, on the ground that the subject mark is identical with or similar to the earlier marks which are already on the Register of Trade Marks in respect of identical or similar description of goods. After extensive hearing and filing of written submissions, Respondent refused registration of the applied mark GEMINI vide impugned order dated 17.04.2025. On 15.05.2025, request was made by the Appellant on Form TM-M for obtaining the detailed grounds of refusal, however, the grounds were never provided.

4. Learned counsel for the Appellant submits that a plain reading of the impugned order demonstrates that Respondent has merely recorded the existence of four cited registered marks on the Register of Trade Marks and concluded that there is a likelihood of confusion amongst the public due to similar nature of goods but there is no comparative analysis of nature and function of the respective goods, the trade channels through which they are sold and/or the relevant class of consumers. Moreover, impugned order fails to identify which of the four cited marks have been relied upon to refuse registration of the applied mark and hence, the order suffers from lack of reasoning required under Section 18(4) of 1999 Act. The most glaring illegality in the order is the finding that Appellant's adoption of the applied mark is not *bona fide*, which is false and not a ground for refusal under Section 11(1) of the 1999 Act.

5. It is further submitted that Respondent failed to appreciate that the targeted consumers and nature of goods under the applied mark and cited marks are dissimilar and there is no scope or likelihood of confusion amongst the members of the public. Appellant's application in Class 09



covers specialized Industrial-grade products-SCADA (Supervisory Control and Data Acquisition), which provide a dynamic and robust medium for medium voltage networks and GEMINI RTU (Remote terminal unit). These are multi-purpose remote terminal units designed for advanced feeder automation and controlling and monitoring of pole and ground mounted medium voltage switchgear. The nature of these goods is clearly supported by Appellant's product catalogues, technical specifications and corporate profile placed on record. These documents demonstrate that Appellant operates in a highly specialized field of power automation, grid monitoring and infrastructure control systems.

6. It is urged that Appellant had filed an application for the mark GEMINI in UK prior to applying for registration in India and has been continuously and extensively using the applied mark in India for over a decade since 13.02.2016. This is duly evidenced by user affidavits and extensive supporting documentation placed on record. As such, on the date of the impugned order, Appellant had already used the mark in India for over 9 years. The adoption and use were clearly *bona fide*, honest and in the ordinary course of trade with no intent to encash upon any potential goodwill of any third party. Goods offered by the Appellant under the applied mark are of a highly specialized nature, distinct in character, application and trade channels and thus do not overlap the goods covered by the earlier four registrations of cited marks and this negates any possibility of confusion or deception in the minds of the relevant consumers, thereby rendering the objections under Section 11 of 1999 Act unsustainable.

7. It is further urged that in stark contrast to the aforesaid goods of the Appellant under the applied mark, goods under cited 'mark 1' No. 728627 in



Class 09 for the mark 'GEMINI' fall under 'wires and cables', which are basic transmission components used for conducting electricity and are commonly traded and used by traders and public in general. In contrast, Appellant's products being SCADA systems, RTUs and industrial switchgear are all advanced control systems integrated with software and supplied as part of specialized engineering projects and are directed at entirely different sections of the public. The description of products as also their nature, purpose and function are different and there is no risk of confusion amongst the public. Moreover, the Appellant and proprietor of cited mark 1 have been co-existing in the Indian market since 2016 with no reported confusion. By virtue of long use, applied mark GEMINI has acquired secondary distinctiveness amongst the customers and is thus entitled to protection under Section 12 of 1999 Act.

8. It is argued that reliance on cited mark 2 with trademark Registration No. 953168 in Class 09 for the mark 'GEMINI' was also misplaced as the products under the said mark relate to television broadcasting network and entertainment services. The proprietor of the cited mark, Sun TV Network Limited is a media and entertainment company engaged in television broadcasting. The products covered under this registration concern entertainment while Appellant's products are industrial power distribution solutions and hence, both categories are entirely different in nature, purpose and consumer base. Further, both parties have been in peaceful coexistence in India since 2016 without any confusion in the marketplace. Respondent failed to take into consideration that Appellant has already filed a rectification petition on the ground of 'non-use' against cited mark 2 on 30.07.2022, which is currently pending adjudication.

9. It is urged that Respondent has overlooked that cited mark 3 with



trademark registration No. 3164101 for the mark GEMINI in Class 09 had been abandoned prior to the date of the impugned order and application for registration of cited mark 4 bearing No. 3939124 for the mark GEMINI in Class 09 was filed on a “proposed to be used” basis, later than the first user date claimed by the Appellant. Reference is made by the counsel to a tabular representation reflecting clear differences in the goods of the Appellant and those under the cited marks as follows:-

Trademark and class	Entity, Date of Application, User	Goods	Difference in Goods of the earlier cited mark and its intended purpose
728627 in Class 09	Ashok Kumar Jain DOA: June 25, 1996 User: April 15, 1989 Status: Registered	“Wires and Cables”	<u>Cited Mark 1 covers only “wires and cables” which are basic transmission components used for conducting electricity and are marketed to general traders and the public. These goods serve entirely different industrial domains, and the intended consumer base differs substantially, ruling out any real chance of confusion or deception.</u> <u>Cited Mark 1 is retailed to mass consumers, while the Appellants goods are marketed through specialized industrial distribution networks to technical professionals.</u> The Appellant's goods include apparatus and instruments for monitoring, measuring, regulating, and controlling electricity such as SCADA systems, RTUs, microprocessors, and electrical switchgear used in industrial electrical infrastructure. The two categories of goods are therefore <u>entirely different</u> in its nature, description, purpose, and consumer base.
953168 in Class 09	Sun TV Network Limited DOA: September 4, 2000 User: “Proposed to be Used” Status: Rectification filed	Recorded video film, recorded cinematographic films, recorded audiocassettes, recorded video cassettes, audio recorded devices and video recorded devices for use with computers, recorded computer software, computer hardware, computer peripherals, electrical and electronic apparatus and instruments, apparatus and instruments for creating, operating, accessing and managing websites on the internet, parts of and fittings for all the aforementioned good included in class 9.	<u>Cited Mark 2 is exclusively used in relation to a television broadcasting network and entertainment services, these goods are typically associated with the entertainment industry, website management, multimedia production, and general computing environments. The target consumers may include production houses, IT professionals, businesses managing online platforms, and members of the general public purchasing media content or computer equipment.</u> Whereas the Appellant's goods include apparatus and instruments for monitoring, measuring, regulating, and controlling electricity such as SCADA systems, RTUs, microprocessors, and electrical switchgear used in industrial electrical infrastructure. There is <u>no overlap</u> in goods or services, consumer intent, or commercial context.



			The two categories of goods are therefore <u>entirely different</u> in nature, description, purpose, and consumer base.
3164101 in Class 09	LG Electronics Inc. DOA: January 20, 2016 User: Proposed to be used Status: Abandoned	Smart phones; Portable communications apparatus namely handsets, walkie-talkies, satellite telephones and personal digital assistants [PDA]; Display and Display modules for mobile phones; Semiconductor chips; Application processors; Wearable Smart phones; Tablet PC; Computer; Printers for use with computers; Portable computers; Notebook PC; Monitors (computer hardware) including for commercial purpose; Digital Signage; Wearable Computer; Television receivers including Display and Display modules thereof; TV remote controls; LED displays; 3D spectacles for television receivers; OLED Display; Wireless headsets including for mobile phones; Ear phones; Audio components system, comprising surround sound speakers, loud speakers, tuners, sound mixers, equalizers, audio recorders, and radios; Apparatus for the recording/transmission or reproduction of sound and images; Network attached Storage; Chargers for electric batteries for smart phones; Wireless chargeable; Liquid crystal protective film for smart phones; Smart phone rings; Power supplies for smart phones; DVD player; Blu ray player; Handheld media players and CD players; Mobile phone cases; Supporting speaker for mobile phones; Flip cover for mobile phones and tablet computers; Tablet computers cases; Batteries, Battery chargers and Supporting battery for mobile phones; Chargeable batteries; Battery compensation chargers; Battery charge devices; Mouse	<u>Cited mark 3 are primarily directed toward mass-market consumers as well as commercial users in the fields of telecommunications, information technology, multimedia, home automation, and digital connectivity.</u> Whereas the Appellant's goods include apparatus and instruments for monitoring, measuring, regulating, and controlling electricity such as SCADA systems, RTUs, microprocessors, and electrical switchgear used in industrial electrical infrastructure. Further, the said registration presently stands abandoned. As such the same should not be considered as a valid mark for the purpose of examination.



		(computer peripheral); Keyboards; USB; Universal serial bus (USB) Dongle (Wireless network adapters); Digital set top boxes; Digital cameras; Network surveillance cameras; Motion recognizing sensors; Motion detectors; Invader sensors; Privacy protection sensors; Alarm sensors for refrigerators, washing machines; Range sensor; Digital sensory devices; Object detecting sensors; Sensor controllers; Pressure sensors; Sensors for measuring instruments; Window opening and closing detecting sensors; Door opening and closing detecting sensors; Transmitters and receivers of electronic signals; Adapters for wireless network access; Multi-function touch buttons; Sensor station; Audio speakers; Digital door locks; Remote controls for controlling electronic products; Home network devices; Electronic security system for home network; Home automation device; Interfaces and peripheral devices for computers; Cloud server; Server for home network system; Server for home automation; Digital audio interface apparatus; Wireless audio/video receivers; Wireless communication apparatus; Remote control apparatus; Remote multi switches; Oscillation sensor devices; Measuring and control devices for air conditioning technology; Air and Dust measuring apparatus; Weight scales and Measuring apparatus not for medical purposes; Automatic control apparatus and instruments; Electric power distribution apparatus; Apparatus for improving power efficiency; Apparatus and instruments for conveying, distributing, transforming, storing, regulating or controlling electric	
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		current; Lighting control apparatus; Apparatus for diagnosing electrical power installations; Apparatus for measuring/monitoring/analyzing electricity consumption; Electric wire and cable; Digital audio and video recorders and players; Speaker systems; Electric audio and visual apparatus and instruments; Modems; Wireless routers; Antennas for wireless communications apparatus; Remote air conditioning control devices; Telemetric apparatus and instruments; Remote control telemetering machines and apparatus; Mobile phones; Telecommunication machines and implements; Remote control apparatus for controlling lighting; Telecommunication converters; Computer software for controlling and managing access server applications; Computer programs for connecting remotely to computers or computer networks; Computer software; Digital electronic controllers; Sockets, plugs and other contacts (electric connectors); Solar panels for electricity generation; Inverter used in solar power generation; Accumulators for photovoltaic power; Electric control devices for heating and energy management; Computer hardware modules for use in internet of things electronic devices; Computer application software including for smart phones, mobile phones, smart TV and handheld electric communication device; Downloadable computer software applications; Operating system program for smart TV; Operating system program for smart phones; Multimedia computer software for the reproduction, processing and streaming of audio, video, and other digital content;	
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		Application software for Televisions and smart phone; Computer programs for accessing, browsing and searching online databases; Computer software to enable users to program and distribute audio, video, text and other multimedia content, namely, music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related and educational programs via communication network; Computer software for the remote control of security apparatus, office machines and equipment, electronic apparatus and instruments and consumer electronic apparatus and electric lighting apparatus, telephone sets and radiotelephony sets; Computer operating system software; Electronic device software drivers that allow computer hardware and electronic devices to communicate with each other; Software for network and device security; Computer software for others to use for the development of software to manage, operate and connect internet of things electronic devices	
3939124 in Class 09	Thermo Scientific Instruments Inc. Portable Analytical DOA: July 02, 2018 User: "Proposed to be used" Status: Protection Granted	Portable spectroscopic instruments using light sources and light detectors for detecting and identifying chemical substances; portable spectroscopic instruments using light sources and light detectors for detecting and identifying biological substances	<u>Cited mark 4 are specialized scientific instruments primarily used in laboratories, research institutions, forensic analysis, environmental testing, and pharmaceutical applications.</u> Whereas the Appellant's subject mark covers entirely dissimilar goods, namely, apparatus and instruments for monitoring, measuring, regulating, and controlling electricity such as SCADA systems, RTUs, microprocessors, and electrical switchgear used in industrial electrical infrastructure.

10. It is thus submitted that Respondent's attempt to treat all goods in question (covered by the cited marks and subject mark) as similar, merely on the basis that they fall under the same class is not legally sustainable and has no legal standing. The correct test which should have been applied was whether the goods in question are commercially and functionally similar



rather than whether there is a theoretical or broad overlap in classification. It is further urged that Section 11 of the Trademarks Act, 1999 requires a finding of likelihood of confusion “on the part of the public”. Respondent herein has miserably failed to identify who constitutes the relevant public in the present case. Respondent has failed to discharge its obligation to pass a reasoned and speaking order, thereby violating the principles of natural justice and procedural fairness. Denial of access to the Statement of Grounds of Decision has materially prejudiced Appellant's right to prefer an informed and effective appeal despite a formal request made in this regard.

11. Learned counsel for the Respondent submits that refusal of Trademark Application No. 5247072 for the Mark “GEMINI” in Class 9 is based on the absolute and relative grounds of refusal under Section 11 of the 1999 Act, specifically citing four valid, prior and identical marks on the Register of Trademarks. Impugned Order is detailed and well-reasoned, based on correct appreciation of facts and law and does not suffer from any infirmity that would warrant interference by this Court. Details of the Appellant’s trade mark application are as follows:

Application No. and Trade Mark	Date of Application (DoA) and User Claim	Class and Description of Goods	Status
5247072 GEMINI (Word)	DoA: 14/12/2021 DoU: 13/02/2016	[Class: 09] Apparatus and instruments for monitoring, measuring, regulating and controlling electricity; apparatus and instruments for use in power supply distribution; electrical switchgears; remote terminal units (RTU); micro-processors; supervisory control and data acquisition (scada) hardware and software; parts and fittings for the aforesaid.	Refused

12. It is urged that Appellant’s Mark “GEMINI” is phonetically, visually and structurally identical to earlier trademarks cited in the Examination



Report, giving rise to a likelihood of confusion amongst the public. The legislative mandate of Section 11(1) prohibits registration of a mark which is identical to an earlier trademark where the goods are similar or identical under the rival marks, as this results in confusion among the members of public. In the present case, the applied mark being identical to the cited marks and goods being similar/identical, the applied mark cannot be registered as it will create confusion among potential customers and will be against Section 11(1) of the 1999 Act. Appellant's goods are electrical goods under Class 09 and those of the proprietor under mark-1 are 'wires and cables' and are often sold through same trade channels and to the same class of consumers such as electricians, contractors and engineers. Thus, there is possibility of high degree of confusion. The contention that Appellant's goods are specialized industrial products and thus different from common wires and cables, is an artificial distinction as in modern electrical industry, cables and switchgears are inextricably linked. A specialized industrial consumer purchasing high voltage cables bearing cited mark 1 GEMINI or purchasing computer hardware, computer peripherals etc. is likely to be confused if he encounters GEMINI branded apparatus and instruments for use and power supply distribution, switchgears etc. Thus, refusal of registration for applied mark against cited mark 1 is justified.

13. It is further argued that cited mark 2 has a priority date of 2000 and hence, impugned order correctly records that cited mark is well in prior use compared to the applied mark.

14. Heard learned counsels for the parties.

15. Appellant applied for registration of trademark GEMINI on 14.12.2021, which was examined on 04.01.2022 and reply was filed to the ER by the Appellant. Perusal of the impugned order shows that the



registration has been declined on the ground that four cited marks GEMINI are phonetically and visually similar to applied mark and the rival products/services are similar and hence, likelihood of confusion cannot be ruled out. It is also observed in the order that Appellant has deliberately chosen the applied mark in an effort to take the goodwill and reputation of the conflicting marks and hence, the adoption is not *bona fide*.

16. Broadly understood, case of the Appellant is that four marks were cited by the Respondent to decline registration of the applied mark but without appreciating that cited mark 1 covers goods, which are completely different from the class of goods under the cited mark. Extensive arguments have been made by the counsel to take the Court through the specialized Industrial-grade SCADA products of the Appellant. In respect of cited mark 2, it is brought forth that the rival goods do not overlap even remotely as the goods under the cited mark pertain to television broadcasting network and entertainment services. For cited mark 3, it is urged that the mark was abandoned prior to date of the impugned order and this crucial fact has been completely overlooked by the Registrar. As for cited mark 4, it is urged that the mark was applied for on a 'proposed to be used' basis much later than the first use by the Appellant and cannot come in the way of registration of the applied mark.

17. Having gone through the ER, reply thereto as also the detailed written submissions filed by the Appellant before the Respondent, I find that none of these crucial submissions have been considered by the Respondent and registration has been refused simply on the ground that the applied mark is phonetically and visually similar to the cited marks and there is similarity of goods. Respondent has not even delved into the differences sought to be brought on record by the Appellant in the nature and function of the rival



goods. The fact that cited mark 3 was abandoned and/or cited mark 4 was applied for on 'proposed to be used' basis much after the first user of the applied mark by the Appellant, is also not considered. In fact, the order indicates that these crucial facts and legal issues are not even referred to by the Registrar in the order. It was likely that if these facts and legal issues were taken into consideration by the Respondent and adjudicated, the decision may have been otherwise. It needs no reiteration that even a *quasi-judicial* authority is under a legal obligation to consider all contentions and issues raised by the parties, to the extent, they are relevant before taking a decision. Seen in this context, the impugned order is clearly unreasoned, non-speaking and reflects non-application of mind.

18. Accordingly, without entering into the merits of the case, the matter is remanded to the Respondent for fresh consideration of Application No. 5247072 filed by the Appellant for registration of trademark GEMINI in Class 09 for the goods in question. Needless to state that the final decision will be taken by the Respondent within 10 weeks from today after hearing the Appellant and taking into consideration all points raised in response to the ER as also documents: priority documents (A3); user affidavit (A5); written submissions dated 06.08.2024 (A9); written submissions dated 17.02.2025 (A12); and written submissions dated 15.03.2025 (A14), all of which are already on record of the Respondent. No new document will be permitted by the Respondent.

19. Appeal is allowed and disposed of in the aforesaid terms.

JYOTI SINGH, J

MARCH 27, 2026

S.Sharma