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

*Reserved on: 24<sup>th</sup> July, 2023.*

*Date of decision: 22<sup>nd</sup> August, 2023.*

+ **C.O. (COMM.IPD-TM) 458/2022**

M/S GM MODULAR PVT LTD ..... Petitioner

Through: Mr. Ajay Amitabh Suman and Mr.  
Risabh Gupta, Advocates. (M:  
9990389539)

versus

SH. GOPAL SHINGHAL & ANR ..... Respondents

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The Petitioner- GM Modular Pvt. Ltd. has filed the present petition seeking cancellation of trademark 'GMT' bearing registration no.15484222 in class 9. The said mark is registered in the name of Respondent No.1- Mr. Gopal Shinghal. The case of the Petitioner is that it is engaged in the business of manufacture and trade of electrical goods, switches, appliances, and other allied and related goods. The Petitioner is stated to have adopted the mark 'GM' in word and label form in the years 1999. Further, the mark 'GM' forms part of the corporate name of the Petitioner as well. Visual representation of the mark of the Petitioner is as under:






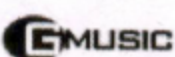




3. As per the petition, the Petitioner has been using the said mark continuously, openly, and exclusively since it adopted it in the course of trade. Further, it is the case of the Petitioner that the mark 'GM' has acquired substantial goodwill and reputation over time. The customers of the Petitioner include WAL-MART, TATA CHROMA, SPENCER'S, FUTURE GROUP, METRO, *etc.*

4. The case of the Petitioner is that it is the registered proprietor of the mark 'GM' in both word and device mark forms in various classes including classes 7, 9 and 11 since the year 1999. Details of the trade mark registrations of the Petitioner have been given along with the petition which are as under:

SL. No.	Trade Mark	Application No.	Class	Date of Application	Logo/label	Status
1	GM INDIA	1277293	6	7/4/2004		Regd
2	GM, INDIA	888186	7	25/11/1999		Regd
3	GM	934451	7	26/06/2000		Regd
4	GM	934456	7	26/06/2000		Regd
5	GMUSIC	1074060	7	16/01/2002		Regd
6	GM INDIA	888187	9	25/11/1999		Regd
7	GM	934452	9	26/06/2000		Regd
8	G MUSIC (LABEL)	1074061	9	16/01/2002		Regd



9	GM	934454	9	26/06/2000		Regd
10	GM INDIA	888188	11	25/11/1999		Regd
11	GM	934453	11	26/06/2000		Regd
12	GM	934455	11	26/06/2000		Regd
13	GMUSIC	1074062	11	16/01/2002		Regd
14	GM INDIA (LABEL)	1277292	17	7/4/2004		Regd
15	GM (DEVICE)	979183	21	26/12/2000		Regd
16	GM INDIA (DEVICE)	1252933	37,38	3/12/2003		Regd

5. Further, the 'GM' mark of the Petitioner in logo form is also registered under the Copyright Act, 1957 bearing registration number A-64280/2003. The Petitioner has been using the mark in question in the course of trade in relation to goods and services within the meaning of section 14 of the said Act. The Petitioner is also stated to be using the mark 'GM' as part of its domain name [www.gmm modular.com](http://www.gmm modular.com) for conducting its business on the internet.

6. The audited accounts for the year 1999-2000 of the Petitioner have also been placed on record which would show that the sales of the Petitioner are to the tune of Rs. 76,92,194/- between April, 2002 to March, 2003.

7. The grievance of the Petitioner in the present petition is that Respondent No.1 has adopted the mark 'GMT' in relation to similar trade



and business as that of the Petitioner, i.e., manufacture and trade of electronics, wires and cables, choke, phatti, starters, electrical bells, buzzers, transformers, sockets, electric connectors, *etc.* The said mark has been registered by Respondent No.1 in his favour under trade mark number 1548422 in class 9.

8. The present rectification petition was filed in the year 2015 before the IPAB. A perusal of the record shows that the order sheet of the IPAB is not available. Further, along with the main petition, an application for stay was also filed by the Petitioner. From 2015 till 2021, the matter remained pending before the IPAB. Upon the enactment of Tribunal Reforms Act, 2021 the matter was transferred to this Court.

9. On 31<sup>st</sup> August, 2022, upon filing of the memo of parties, notice was issued to the Respondents. The record shows that the notice was served to Respondent No.1 through ordinary process on 16<sup>th</sup> January, 2023. The Process Server noting would show that the notice was received by one Mr. Gaurang Singhal who informed the Process Server that he is the son of Mr. Gopal Shinghal, i.e., Respondent No.1. The factum of service is also recorded in the order of the Joint Registrar (Judicial) dated 14<sup>th</sup> February, 2023.

10. Vide order dated 4<sup>th</sup> July, 2023, Respondents' right to file reply has been closed. Accordingly, the Respondents are proceeded *ex parte*.

11. Ld. Counsel appearing for the Petitioner submits that the adoption of the mark 'GMT' for electrical products in class 9 and the registration of the same would be contrary to the provisions of Section 11 of the Act and hence is deserved to be rectified/cancelled.



12. Ld. counsel places reliance on various advertisements which date back to 2000, 2002 and 2003 to show that immediately after adoption itself, the mark had become extremely popular and also enjoyed enormous goodwill. Reliance is placed upon certain photographs and other material including advertisements of the said years to show how even for cricketing events, the mark 'GM' was being used for promotion of its product by the Petitioner.

13. Reliance is placed upon the judgment of a Id. Single Judge of this Court in *GM Modular v. TM Marketing India CS(OS) 26/2004*, dated 3<sup>rd</sup> July, 2007 wherein the Court granted an injunction in respect of the mark 'GM'. In the said judgment, the Court has recorded that the sales for the year 2002-03 was more than Rs.76 lakhs. It is argued that the reputation of the mark in question has already been recognised and protected by this Court in the said judgment.

14. Ld. counsel for the Petitioner also relies upon the judgment of the Id. Division Bench of this Court in *Max Switchgears Pvt. Ltd. v. Omex Cables Industries and Ors.*

15. A perusal of the petition would show that the trademark of the Respondent is 'GMT' registered under trade mark number 1548422 in an identical class as that of the Petitioner, i.e., Class 9. The details of the said trademark are set out below:



TM Application No.	1548422
Class	9
Date of Application	11/04/2007
Appropriate Office	DELHI
State	DELHI
Country	India
Filing Mode	Branch Office
TM Applied For	GMT
TM Category	TRADE MARK
Trade Mark Type	WORD
User Detail	01/04/2004
Certificate Detail	Certificate No. 841699 Dated : 19/03/2010
Valid upto/ Renewed upto	11/04/2017
Proprietor name	(1) SH. GOPAL SHINGHAL Single Firm
Proprietor Address	7/8, KARKARI ROAD, VISHWAS NAGAR, DELHI.-32
Email Id	
Agent name	LALJI TRADE MARK CO.[1319]
Agent Address	A/48, YOJNA VIHAR, DELHI - 110 092.
Goods & Service Details	[CLASS : 9] ELECTRONIC AND ELECTRICAL INSTRUMENTS INCLUDING WIRE & CABLES, CHOKE, PHATTI, STARTERS, ELECTRIC BELLS AND BUZZERS, TRANSFORMERS, ELECTRIC SWITCHES, ELECTRIC CUT OUTS, ELECTRIC PLUGS, M.C.B. SOCKETS, ELECTRIC CONNECTORS, ELECTRIC CONNECTION AND ELECTRIC CONTACT DEVICES, ELECTRIC HOLDERS, ELECTRIC FLAT IRON, CONDENSER, CAPACITOR AND ELECTRICAL FITTINGS AND ACCESSORIES.
Publication Details	Published in Journal No. : 1400-0 Dated : 16/09/2008

16. The user claim by Respondent No.1 is from 1<sup>st</sup> April, 2004 and the mark was duly renewed till 2019. The latest status of the trademark is that it is registered as on date.

17. The Petitioner is the owner of the mark 'GM' in various forms and variants including device marks and logo mark. One such mark is also 'GM INDIA'. The mark 'GM' is used by the Petitioner on a large variety of electronic products including switches, accessories, sockets of several varieties, socket outlets, socket shutters, ordinary switches, push type switches, flush type switches, *etc.* The sales figures of the Petitioner have also been placed on record which was duly audited by the Chartered



Accountant dating back to the year 1999-2000. A large number of documents and invoices are placed on record to show use of the mark 'GM' by the Petitioner. The said mark has also been extensively advertised in various newspapers.

18. The Petitioner's mark has also been protected against use of deceptively similar marks such as 'TM' in respect of identical products. One such decision has been rendered by a Id. Single Judge in **CS(OS) 26/2004** titled **M/S GM Modular Pvt. Ltd. versus M/S TM Marketing (India) & Others** dated 3<sup>rd</sup> July, 2007 where the Court clearly records that the device marks 'GM' and 'TM' were deceptively similar. An injunction has been granted against use of device mark 'TM' in the said decision. Relevant portion of the said order reads as under:

*15. The test for determining whether one trademark is deceptively similar to another is based on the likelihood of confusion or deception arising in the minds of the consumers. Visually comparing the trade / label "GM" with the trademark / label "TM", one finds that they are prone to be confused for each other. The background, colour (red) is the same. The letters "GM" and "TM" are similar. The manner and style in which "GM" and "TM" are indicated are prone to be confused for one another. Looking at Annexures-A and D-A-I and comparing the two, there is no doubt in my mind that the two are deceptively similar. As regards Annexure B and Annexure D-B-I, if the elements of the trademarks "GM" and "TM" as indicated in Annexure-A and D-A-I (respectively) are removed, there would be no deceptive similarity between them (Annexure B and Annexure D-B-I). If the essential features as submitted by the learned counsel for the defendants were "G Magic" and "Touch Me", then the defendants ought to have no objection to the deletion*



*or removal of the trade mark / label “TM” because even as per their submissions, this is not an essential feature.*

19. Coming to the present case, none of the averments of the Petitioner have been rebutted by the Respondents. Respondent No.1 has not bothered to file a reply since 2015 in this matter. Use of the mark ‘GMT’ for identical products would be violative of the rights of the Plaintiff in the mark ‘GM’ for products under Class 9. In fact, from the record it is apparent that marks ‘GM’ and ‘GM MODULAR’ have attained enviable reputation in the area of electrical and electronics products. ‘GM’ though being a two letter mark has, due to long and continuous user by the Petitioner, acquired a secondary meaning and reputation in the electrical trade. It is the settled legal position that two letter marks can be protected so long as they are arbitrary adoptions and combinations and they are exclusively associated with one entity.
20. In *Harmohan Singh v. Gurbax Singh*, J. Sikri, Id. Judge of this Court, in a case concerning dispute between two letter marks, namely, ‘GP’ and ‘GPI’ observed as under:

**10. The trade mark ‘GPI’ used by the defendant in respect to the same goods is deceptively similar to that of the trade mark ‘GP’ of the plaintiff was not even disputed by the defendant. However, still if any precedents are required to this effect, one may refer to the case of S. Mehar Singh Vs. M.L.Gupta & Co. reported as 1997 PTC(17) where trade mark ML and MLI were held to be deceptively similar. In the case of M/s Asha Soap Factory, Ulhasnagar-3, Distt, Thane Vs. Dhanthak & Company, Andheri, Bombay-70 & Anr. reported as 1984 PTC 1 trade mark BB and 88 were treated as deceptively similar. Likewise, this court in the case of Dharam Chand Gambhair Vs. Milan Confectionary and Anr. Reported as 2000(3)**



*ALR 593 held trade mark GP and CP as deceptively similar. In the case of M/s Vrajlal Manilal & Co. Vs. M/s Adarsh Bidi Co. reported as 1995 PTC 88 trade mark 22 and 122 were held as deceptively similar on the ground that the phonetic similarity between the figures '22' and '122' there is possibility of unwary consumers being led away in purchasing defendants bidis as that of plaintiffs.*

21. The Petitioner in the present case is one of the leading brands manufacturing and selling electrical products. The mark of Respondent No.1- 'GMT' encompasses the whole of the Petitioner's trademark, namely, 'GM'. The Petitioner's oldest registration with the mark 'GM' dates back to 1999. Clearly, the Petitioner is the prior use, prior adopter and the registered owner of the mark 'GM'. It is surprising that when the Respondent No.1's mark was examined, the Petitioner's mark was not cited and if cited, Respondent No.1's mark proceeded for registration.

22. In the opinion of the Court, the marks 'GM' and 'GMT' are clearly deceptively similar marks. It is possible that the consumer would believe that 'GMT' is another series of the products launched by the Petitioner itself. Moreover, 'GMT' being deceptively similar would be hit under Section 11(1)(b) of the Act which prohibits registration of a mark deceptively similar to a mark which is already on the register in respect of identical or similar goods.

23. Moreover, the Petitioner being the owner of the mark 'GM' is clearly a person aggrieved under the Act who can maintain a cancellation petition under Section 57. The Registration of the mark 'GMT' would be contrary to Section 9 and Section 11 of the Act as the said mark would not be distinctive



of Respondent No.1's goods or services.

24. In the absence of any reply and Respondents having no justification to use 'GMT', the mark 'GMT' of Respondent No.1 deserves to be rectified.

25. Under these circumstances, following the settled law, in order to maintain the purity of the register, the Respondent's mark 'GMT' in Class 9 standing in the name of Mr. Gopal Shinghal shall be cancelled/removed from the Trademark Register.

26. Let the record of the Trade Marks Registry reflect the same within four weeks.

27. The Petition is allowed in the above terms. All applications are disposed of.

28. The present order be communicated to the Registry of trademarks on the e-mail [llc-ipo@gov.in](mailto:llc-ipo@gov.in).

**PRATHIBA M. SINGH  
JUDGE**

**AUGUST 22, 2023**  
*Rahul/SK*