

To
The Registrar of Trademark
Indian Patent and Trademarks Office
Mumbai, Maharashtra

Sub: Reply to the Examination Report for Application No. NTMC2020053 in Class/Classes: 9
In the name of M/s Earthy Telecommunications Pvt. Ltd.


Sir,

In furtherance to the Examination Report dated 16th August, 2020 regarding the trademark “Pluots,” which is the subject matter of Application No. NTMC2020053 in Class: 9 in the name of M/s Earthy Telecommunications Pvt. Ltd., we would like to humbly submit the following response:

1. The trademark “Pluots” is a distinct and a unique word mark, and therefore it requires a higher level of distinctiveness. We disagree with the Examiner on stating that the mark is identical with or similar to earlier marks in respect of identical or similar description of goods or services and that because of such identity or similarity there exists a likelihood of confusion on the part of the public.
2. The trademark “Pluots” is proposed to be registered under Class 9 dealing with goods such as mobiles and related accessories including wires, cords, earphones, chargers, covers and related hardware as well as the inner parts of the mobile that are essential for its functioning, like operating system, mobile applications, softwares among others.
3. The mark of the present applicant is different from the mark objected by the Examiner. The mark cited by the Examiner is orally, aurally, visually, structurally and phonetically variant from that of the present applicant.

4. The proposed trademark which has been alleged to be similar is called “Ploutos.” The word structure of the proposed trademark and this existing trademark is different due to the difference in the spelling of these two words. These are two entirely different words with two distinct meanings and pronunciations. Therefore, the proposed trademark and the existing mark are extremely dissimilar.

5. The proposed trademark has also been styled differently than the already existing trademark. The trademark of the applicant has been very simply styled as a black and white mark whereas the mark that has been registered earlier has been styled with blue background along with a pictorial in their trademarked image. The above two reasons have been summarised in the table below:

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| <p>Proposed Trademark: Pluots</p> | <p>English word for a fruit from the stone fruit family. Pronounced as /pluots/ Styled as</p> <div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Pluots</p> </div> |
| <p>Existing Trademark: Ploutos</p> | <p>Greek God of wealth, more commonly written as Plutus. Pronounced as /ˈpluːtəs/ Styled as</p> <div style="text-align: center;">  </div> |

6. The manner these two trademarks are presented and applied for registration enables an average reasonable and prudent consumer of ordinary intelligence to easily differentiate

between the products offered by both these traders. Both these brands would not be associated with each other, even remotely.

7. Moreover, both these trademarks have been filed for two different sets of goods enumerated in Class 9. Class 9 generally deals with all types of scientific and electrical apparatus and instruments. These include an enormous amount of products in this category. The already existing trademark “Ploutos” trades in MCB switch & MCB Distribution boards main switch, change over switch, fans and panels, which are included in Class 9. The proposed trademark deals with a completely different set of products i.e. mobiles and related accessories including wires, cords, earphones, chargers, covers and related hardware as well as the inner parts of the mobile that are essential for its functioning, like operating system, mobile applications, softwares among others. The two trademarks in question, though included in the same class of goods, deal in quite unrelated markets and have a very different presence of their own. No consumer of average intelligence will confuse these two of being the same businesses, when the factors of different word structure, spelling and different goods are combined.
8. The Supreme Court has also stated that observed that the monopoly under Trademark only extends to the goods which are falling in a particular class and not the entire class of goods and the trade mark which is identical or similar in nature can be registered for the goods which are falling within the same class inasmuch as giving the monopoly to the entire class of goods and services to the registered proprietor would lead to trafficking in the trade mark which is not the object and the purpose of the Trade Mark Act, in the case of *Vishnudas Trading Co. v. Vazir Sultan Tobacco Co. Ltd.* (1997) 4 SCC 201. It has also been reiterated by the Hon’ble Supreme Court that not only the visual appearance of two marks are different, but the products are even related to different products, in that case both the trademarks will be held to be distinct, in the case of *Nandhini Deluxe v. Karnataka Co-Operative Milk Producers Federation Ltd.* AIR 2018 SC 3516.

Therefore, it is humbly prayed to the registrar to declare that the proposed trademark is distinct and unique thereby allowing the proprietors to go ahead with the filing procedure.

Yours Faithfully

M/s SR Associates

Mumbai, Maharashtra