

\$~A-22

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

+ **CS(OS) 571/2013**

Date of decision: 08.04.2015

AGILENT TECHNOLOGIES INC & ORS Plaintiffs

Through **Mr.Subhash Bhutoria, Adv.**

versus

AGILENT STEEL PVT LTD Defendant

Through **None.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Arguments have been heard in the suit. The Defendant no.1 was served but none appeared on behalf of the defendant. Thus, Defendant no.1 is proceeded ex parte vide Order dated 25.11.2013. Also vide Order dated 25.11.2013 proposed Defendants no.2 to 6 were issued notice. Further, as none appeared on behalf of the proposed defendants even after issuance of notice, vide Order dated 21.02.2014, the proposed defendants are impleaded. The Defendants are ex-parte.

2. The present suit is filed by the Plaintiffs for permanent injunction restraining the Defendants, its directors, affiliates, employees, agents, distributors, franchises, representatives and assigns from using the impugned trademark/corporate name “AGILENT STEEL PRIVATE LIMITED”, “AGILENT INFRASTRUCTURE PRIVATE LIMITED” and “AGILENT

BPO PRIVATE LIMITED” as well as their domain name “www.agilentbpo.com” or any other deceptively similar mark amounting to infringement of Plaintiffs’ registered trademark/corporate name “AGILENT”.

3. It is the contention of the Plaintiffs that they are one of the world’s premier measurement companies which designs and manufactures inter alia bio-analytical and electronic measurement solutions to the communications, electronics, life sciences and chemical analysis industries created in the year 1999. It is contended that Plaintiff has leadership in diverse industries with more than 20,000 employees and presence in more than 100 countries including India with over 1600 professionals engaged in marketing, sales and customer support and transaction processing in India alone.

4. It is the further contention of the plaintiff that they are the owner of the trademark and service mark AGILENT and other trademarks/service marks in which the trade mark AGILENT is a component thereof. It is contended that the said mark is a well-known mark of the plaintiffs and is derived from the plaintiff’s corporate name, Agilent Technologies Inc. which is coined word with no independent meaning. Details of registrations of the said mark of the plaintiff is provided in para 6 of the plaint, the earliest being in 1999. It is further contended that the said mark of the plaintiff stands registered in 183 countries.

5. It is also contended that over the years the Plaintiffs have derived vast revenues from the products sold and services provided under the Plaintiffs’ registered and well-known trade mark AGILENT. The plaintiff’s global revenues from the Fiscal Years 1999 to 2011 are provided in para 13 of the plaint.

6. The plaintiff contends that the mark AGILENT has been extensively advertised and promoted on the internet through the plaintiff's website www.agilent.com, besides other regional websites for other countries of the world. The said website contains extensive information about the plaintiff and the products marketed and sold by them.

7. It is the contention of the Plaintiffs that they came across the misuse of its corporate name and registered trademark AGILENT by the Defendant in and around September, 2012 when it became aware of the Defendant No.1 company under the name 'AGILENT STEEL PVT. LTD.' having its registered office in Ahmedabad, Gujarat. It is further contended that as per the records of Ministry of Corporate Affairs the Defendant No.1 Company was registered since February 07, 2012 and after the investigation into the Defendant No.1's activities it was revealed that the Defendant is using the Plaintiff's trademark AGILENT as its corporate name wherein the Defendant No.1 Company was involved in manufacturing unbranded steel products. It was also revealed that Mr. Narayan Rohitbhai Mistry, the Defendant no.4 is one of the Directors of Defendant no.1 & 2 and is operating the impugned business from the residential address B312 Aishwarya Apartments, Opposite Star India Bazaar, Ahmedabad , Gujarat registered on the Ministry of Corporate Affairs, website.

8. It is also the contention of the Plaintiff that during the pendency of the suit upon further investigation into the records of the Registrar of Companies on the website of Ministry of Corporate affairs in April, 2013 the Plaintiff's came across another company under the corporate name "AGILENT INFRASTRUCTURE PRIVATE LIMITED" (Defendant No.2) and "AGILENT BPO PRIVATE LIMITED" (Defendant No.3) as well as their

domain name “www.agilentbpo.com”, Defendant no.2 is also having its registered office at B3/2 Aishwarya Apartments, Opposite Star India Bazaar, Jodhpur Cross Roads, Satellite Ahmedabad , Gujarat, i.e. same as Defendant No.1. It was also ascertained that Defendant no. 4, 5 and 6 are Directors of Defendant no. 2 and Defendant no.1.

9. The Plaintiff contends that the Defendant’s adoption and use of the mark “AGILENT” as a trade name/ corporate name constitutes infringement of its registered trademark and that the Plaintiff also manufactures steel products such as “Stainless Steel Metal Bonnet Sealed Tube Valves” and the adoption of Agilent Steel by the Defendant is bound to make the public believe that there is some nexus between the impugned trade mark/ corporate mark of the Defendant and that of the Plaintiff.

10. It is also contended by the Plaintiffs that two cease and desist notices were served to the Defendant dated September 11, 2012 and November 19, 2012. No response has been made to the Plaintiff.

11. The Plaintiff submits that the Defendants trade name contains the Plaintiff/s mark “AGILENT” which is a well known mark in India by virtue of Section (1) (zg) of the Trade Marks Act, 1999. The Plaintiff also states that the Registrar of Trademarks has included the Plaintiff’s corporate mark/trade mark “AGILENT” amongst the list of well known trade marks in India. The contention of the Plaintiff is that the infringing corporate name/ trademark being used by the Defendants is visually, phonetically and structurally identical to the trademark of the Plaintiff and that the adoption of the impugned mark by the Defendants is bound to create confusion and deception in the minds of the general public as the public will assume some association and nexus between

the Defendant's business and the Plaintiffs' business & services.

12. Mr. G. Phani Kumar, Constituted Attorney of the Plaintiffs has led evidence on behalf of the Plaintiff as PW1. He states that the word 'AGILENT' is derived from its corporate name Agilent Technologies Inc. and that it is registered under various classes earliest registration being in the year 1999. The certified copies of registrations are placed on record as Ex.PW-1/2. It is stated that the corporate and trade mark AGILENT has been extensively advertised and promoted on the internet through the website of the plaintiff, www.agilent.com. A CD containing Plaintiff's website is placed on record as PW1/2. The plaintiff operates in India in electronics, communications, life sciences & chemical analysis market. It is stated that in or around September, 2012, the plaintiff came across the misuse of its corporate name AGILENT by the Defendants under the name 'Agilent Steel Pvt. Ltd.' The printout from the Ministry of Corporate Affairs reflecting that the Defendant no.1 was registered with the Registrar of Companies since 07.02.2012 is placed on record as Ex.PW-1/13. It was found out that Defendant is using the plaintiff's trade mark AGILENT in respect of business of manufacturing unbranded steel products. It is stated that the plaintiff company sent a cease and desist notice to the defendants on 11.09.2012 followed by a reminder letter. The cease and desist notice is placed on record as Ex.PW-1/15. It is stated in the Affidavit that the Plaintiff filed an Application for impleadment of Defendant no.2-6, being I.A. No. 18540/2013 which was allowed and they were restrained from using Plaintiff's trademark AGILENT vide order dated 21.02.2014. It is stated that in April, 2013 Plaintiff came across the corporate name 'AGILENT INFRASTRUCTURE PRIVATE LIMITED' on the records of the Registrar of

Companies. It is also stated that the addresses of Defendant No.1 and Defendant no.2 is the same. The print out from Ministry of Corporate Affairs is placed on record as Ex. PW1/18. It is stated that the Plaintiff also came across a company under the name “AGILENT BPO PRIVATE LIMITED”, Defendant no.3. The print out from the Ministry of Corporate Affairs reflecting the same is placed on record as Ex. PW1/22. It is further stated that as per the search records of WHOIS for the domain name www.agilentbpo.com., Registrant of the said domain name is Mr. Nayan Mistry, Defendant no.4. Print out stating the same is exhibited as Ex. PW1/21. Moreover, in the records of Ministry of Corporate Affairs it is also stated that Defendant no. 4,5 & 6 are Directors of Defendant no. 1,2 & 3. A print out of the same has also been placed on record as Ex. PW1/19 and Ex. PW1/23.

13. In view of the above averments made in the plaint and the un-rebutted evidence filed by the Plaintiff, the Plaintiff has established that it is the registered proprietor of the said trademark “AGILENT”, thus has a statutory right to the exclusive use of the same. The Plaintiff has also proved that use of the mark by the Defendants “AGILENT STEEL PRIVATE LIMITED”, “AGILENT INFRASTRUCTURE PRIVATE LIMITED” and “AGILENT BPO PRIVATE LIMITED” as well as their domain name “www.agilentbpo.com” constitutes violation of the Plaintiff’s statutory right as it is structurally, visually and phonetically identical to the registered trademark of the Plaintiff. The acts of the Defendants also appear to be lacking bonafide. The infringing business activities and the deceptively similar trademark enjoyed by the Defendants will lead to passing off of the services as that of the Plaintiff.

14. Accordingly, a decree of permanent injunction is passed in favour of the Plaintiff and against Defendants No.1 to 6 restraining the said Defendants from manufacturing, selling, advertising, dealing in goods and using the impugned corporate names “AGILENT STEEL PRIVATE LIMITED”, “AGILENT INFRASTRUCTURE PRIVATE LIMITED” and “AGILENT BPO PRIVATE LIMITED” as well as the domain name “www.agilentbpo.com” and/or any other mark similar or deceptively similar to the Plaintiff’s trade mark “AGILENT” as a trade mark or a part of a trade mark, trade name or corporate name, or as a domain name or a part of the domain name, or as a metatag on the internet, in any manner.

15. The Plaintiff shall also be entitled to costs. The present suit and all pending applications are disposed off.

JAYANT NATH, J

APRIL 08, 2015

Nat/sh