

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

**Reserved on: 01st November, 2017
Pronounced on: 13th November, 2017**

+

CS(COMM) 1492/2016 & IA No.26197/2015

HELAMIN TECHNOLOGY HOLDING SA & ANR

..... Plaintiffs

Through : Mr.Pravin Anand, Ms.Abhilasha
Nautiyal and Ms.Pankhuri Malik,
Advocates.

versus

HARIBANSH RAI & ORS

..... Defendants

Through : None being ex parte.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Brief facts of the case as per the plaint are:-

a) that the plaintiff No.1 is a limited Company Incorporated under the laws of Switzerland and is the world leader in development, production and marketing of specific scale corrosion inhibitors used in water-steam and heating circuits/steam generators, warm and hot water networks, boilers, turbines, cooling systems etc. The plaintiff No. 1 began its commercial operations in 1986 when the trademark and the name 'HELAMIN' was first used in the course of trade;

- b)** plaintiff No.2 is the wholly-owned subsidiary and the manufacturing and world export branch of plaintiff No.1 and uses the trademark and trade name HELAMIN under the license from plaintiff No.1. Plaintiff No.2 was founded on 11th May, 1989 and is a limited Company incorporated under the laws of France;
- c)** plaintiff No. 1 is the pioneer and inventor of a revolutionary polyamines filming technology to prevent scale and corrosion in watersteam cycle systems (turbines included) as well as in cooling systems. The plaintiffs' products serve to form a continuous and hydrophobic protective film on metal surfaces, thus acting as a barrier between water and metal to prevent corrosion;
- d)** the plaintiff No.1 has a strong international commercial presence in over 40 countries across the world including India and has a leading share in its specific market segment within the global water treatment chemicals market. The plaintiff No.1's products are sold through an integrated distribution network supported by the plaintiff's international distributors in several countries;
- e)** the plaintiffs have been using the trademarks HELAMIN 906 H and HELAMIN BRW 150 H since the year 1993 and the trademark HELAMIN 90 H-TURB since the year 2002. The plaintiff No.1's trademark HELAMIN is coined from 'Helvetia' (the Latin name for Switzerland) and 'Polyamin' which denotes a chemical compound comprising of multiple amino groups;
- f)** the plaintiff No.1 had applied for registration of the trademark HELAMIN in India under application No.1717404 in relation to chemicals used in industry and chemical products for

the protection of metallic surfaces" in classes 1 and 2 respectively, as of 1st August, 2008;

g) as a result of long and continuous use since the year 1986, coupled with extensive sales spanning over wide geographical area, the trademark/name HELAMIN has acquired tremendous reputation and goodwill amongst the customers and the members of the trade all over the world and has become distinctive of the plaintiffs. The well-known character of the plaintiffs' trademark/name HELAMIN is reflected from the plaintiffs' worldwide consolidated sales turnover from 2000 to 2011 which averaged approximately US \$10,000,000 per year. The worldwide consolidated advertisement expenses for the plaintiff's HELAMIN products from 2000-2011 aggregates to approximately US\$300,000;

h) in 2001, defendant No. 3 began working with Helamin Technology Holding Group (HTHG) as a technical consultant for their UAE market. During his course of employment with the plaintiffs, he had access to confidential information as well as end user customer know-how and received technical training pertaining to the working and applications of HELAMIN water treatment chemicals;

i) on 28th June, 2001, defendant No. 6 Helamin Impex Pvt. Ltd. was incorporated at the initiative of defendant No. 3 as the CEO. Thereafter, an informal agreement was arrived at between Filtro S.A. (international distributor of plaintiff No. 1 at the time)

and defendant No.6 for supply of samples of original HELAMIN products for the purpose of trial tests only;

j) defendant No. 6 reported additional trials and surreptitiously continued to obtain HELAMIN samples from Filtro S.A. to conduct further trial tests. Defendant No.7, who is the director of defendant No.8 i.e H2O Facilities SA left Filtro SA in December, 2006 and had misappropriated and forged letter heads and stamps of Filtro SA;

k) in early 2007, Filtro SA was voluntarily liquidated, consequent upon which plaintiff No.2 succeeded Filtro SA and took over as the exclusive International Distributor of the HEL_AMIN products. In the absence of a contract or signed agreement between Filtro SA and defendant No.6 and in view of the consistently poor results achieved by defendant No.6 inspite of several trial tests conducted by it with the sample HELAMIN products, plaintiff No.2 ceased the supply of the HELAMIN water treatment chemicals to defendant No.6. While defendant No.6 stopped requesting for sample HELAMIN products for trial tests from plaintiff No.2, defendant No.6 continued to unauthorisedly import and supply water treatment chemicals under plaintiff No.1's trademark HELAMIN and also continued to transact business under the corporate name/trade name predominantly comprising of HELAMIN;

l) thereafter, inquiries were conducted in the market by the plaintiffs which revealed that defendant No.6 was selling water treatment chemicals based on the 'Helamin' technology to fertilizer

companies in India and also created false impression that defendant No.6's products originated from or were connected to the plaintiffs. On further inquiries by the plaintiffs, it was revealed that the products being sold by defendant No.6 were procured/imported from defendant No.9, which is subsidiary of, or is connected and/or related to defendant No.8 and is being actively run and managed by defendant No.7;

m) defendant No.7 was unlawfully claiming to have obtained the approval to grant manufacturing/blending rights to defendant No.6 during his tenure at Filtro SA. It is stated that there was never such an approval granted to defendant No.6 by Filtro SA, especially since Filtro SA was never authorized to grant such rights being merely an international distributor of HELAMIN products and the only entity that was authorized to grant such rights was plaintiff No.1.;

n) the defendants are extensively using plaintiff No.1's trademark and name HELAMIN in relation to its products and services, thereby, misleading the public into believing that the defendants' products originate from or are connected to the plaintiffs. It is also alleged that the defendants do not maintain their own website, there are web pages hosted by other entities which pertain to the defendants and their activities, wherein the defendants have hyperlinked the plaintiff's website www.helamin.com giving the impression that the defendants are connected to or affiliated with the plaintiffs;

o) plaintiff No.1 (Helamin Technology Holding SA) is the pioneer and inventor of a revolutionary polyamines filming technology to prevent scale and corrosion in water-steam cycle systems (turbines included) as well as in cooling systems (open or closed), which was launched under the trade mark HELAMIN and is patented;

p) the Plaintiffs have been using the trademark HELAMIN since the year 1986, the trademark HELAMIN 906 Hand HELAMIN BRW 150 H since the year 1993, and the trademark HELAMIN 90 H-TURB since the year 2002;

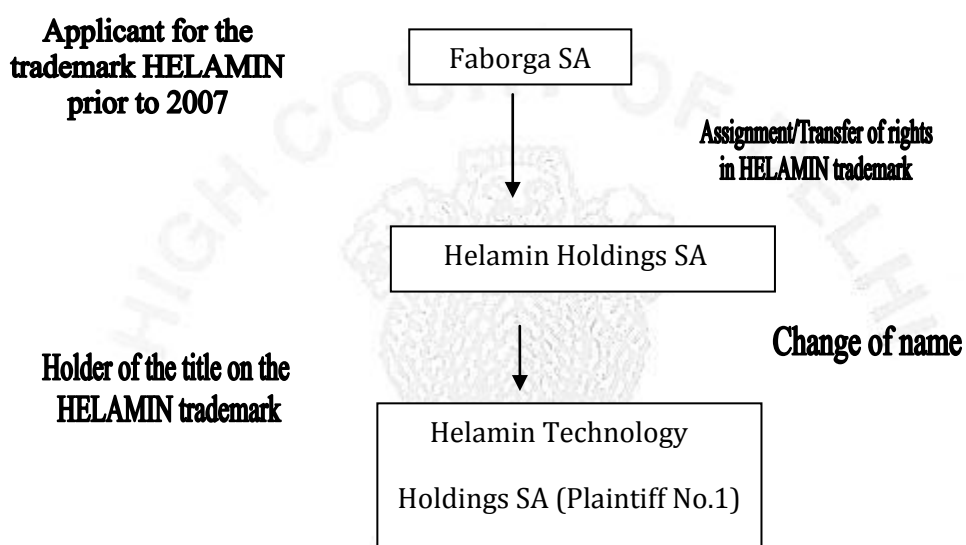
q) the Plaintiff (which term includes its predecessors in title and interest) and Defendant No. 6 entered into an informal arrangement/ agreement in the year 2001 under which defendant No. 6 acted as the plaintiffs' supplier of HELAMIN goods in India from the year 2001 – 2006;

r) it is also an admitted position (as is evident from the stand taken by Defendants No. 1 to 6 in their written statement) that the informal arrangement/ agreement between the parties no longer exists;

s) however, despite termination of said arrangement, it was verily believed that Defendants No.1 to 6 were procuring/ purchasing/ obtaining/ importing counterfeit HELAMIN water treatment chemicals from Defendants NO.7 to 9. Defendant No. 9 is a subsidiary of Defendant No.8, H2O Facilities. Defendant No.7, Mr. Pierre Bezzoli is an ex-employee of Filtro SA (Plaintiffs' erstwhile distributor) and the founder director of Defendant No.8;

t) plaintiff No.1 holds the title over the trademark HELAMIN in India and in several countries across the world and has accordingly obtained/ applied for protection for the trademark HELAMIN across the world. The chain of title leading to the Plaintiff acquiring rights in the trademark;

u) HELAMIN is given below;



2. The Plaintiffs placed reliance on the trademark assignment agreement between trademark Faborga SA and Helamin Holdings SA per the Convenience Compilation dated November 22, 2014). The Plaintiffs has also placed reliance on the application (bearing No. 1717404) for the Trademark HELAMIN. The said application was originally filed in the name of Helamin Holdings SA and subsequently a request was filed for recordal of change of name of Helamin Holdings SA to Plaintiff No.1 per the Convenience Compilation dated November 22, 2014). Similarly, plaintiff No. 1 has filed another trademark application bearing no. 2493382 for

the Trademark HELAMIN. Further, records of the plaintiff's trademark registrations in countries such as Switzerland, Hungary, Greece and Denmark have also been filed by the plaintiffs in the present proceedings. These documents unequivocally establish the plaintiff has title in the trademark HELAMIN.

3. Thus the Plaintiffs' trademark HELAMIN is a coined mark being formed from two words 'HELVETIA' (the latin name for Switzerland) and 'POLYAMIN' and thus enjoys a very high degree of protection. Plaintiffs, through their predecessors in interest, adopted the mark in the year 1986 and have been using the mark worldwide since then. In order to establish its use of the trademark HELAMIN before the year 2001, the Plaintiff has filed number of brochures and promotional material evidencing using of the trademark HELAMIN products before the year 2001 (Pages 40-59 of the Convenience Compilation).
4. The arrangement/ agreement between the Plaintiffs and Defendant No.6 was terminated in the year 2006 as has been admitted by Defendants No. 1 to 6, they have no right to use the trademark HELAMIN after the termination of the relationship and once the supply of the HELAMIN seed material had ceased.
5. However despite termination of said arrangement, Defendants No. 1 to 6 were procuring/ purchasing/ obtaining/ importing counterfeit HELAMIN water treatment chemicals from Defendants NO.7 to 9. Defendant No. 9 is a subsidiary of Defendant No.8, H2O Facilities. Defendant No.7, Mr. Pierre Bezzoli is an ex-

employee of Filtro SA (Plaintiffs' erstwhile distributor) and the founder director of Defendant No.8.

6. Defendant No.7, who was an employee of Filtro SA at the time, founded Defendant No.8 on October 17, 2006. Subsequently, in December, 2006 Defendant NO.7 left Filtro SA and he allegedly misappropriated letter heads and stamps of Filtro SA and erased certain databases before his departure.
7. In early 2007, Filtro SA was voluntarily liquidated, consequent upon which, Plaintiff No. 2 succeeded Filtro SA and took over as the exclusive International Distributor of the HELAMIN products.
8. Inquiries by the Plaintiffs revealed that the products being sold by Defendant No. 6 were procured/ imported from Defendant No.9, which is a subsidiary of, or is connected and/or related to Defendant No.8, and is being actively run and managed by Defendant No.7.
9. Defendant No. 7 was unlawfully claiming to have obtained the approval to grant manufacturing/blending rights to Defendant No.6 during his tenure at Filtro SA. There was never such an approval granted to Defendant No.6 by Filtro SA, especially since Filtro SA was never authorized to grant such rights being merely an international distributor of HELAMIN products and the only entity that was authorized to grant such rights was Plaintiff No.1.
10. Defendant No. 7 misappropriated letterheads from Filtro SA before leaving the company, following which, he forged a letter granting blending rights in favour of Defendant NO.6 and backdated it to give an impression that it originated from Filtro

SA, presumably as a defence to the spurious nature of the counterfeit HELAMIN products sold by Defendant No.6.

11. In a similar instance, Defendant No.7 unlawfully issued a fake authority letter in favour of a company based in Iran, a copy of which is filed in the present proceedings, clearly indicating that the same was issued on September 10, 2007 i.e. 9 months after Defendant NO.7 had left Filtro SA.
12. On 14.11.2011, Plaintiff No. 1 received an email from Nagarjuna Fertilizers and Chemicals Ltd enclosing an email it received from Defendant No. 7 (Page 115 of the Convenience Compilation). In the said email Defendant No. 7 admits its relationship with Defendant No. 9 and had claimed to have been responsible for R&D and the global implementation of HELAMIN during his tenure at Filtro SA and further claimed to have formulated HELAMIN himself. Defendant No. 7 also claimed that there was a "fake producer" of HELAMIN in France and further informed Nagarjuna that Defendant No. 6 was an agent /blending rights holder of Filtro SA before it was liquidated. Significantly, Defendant No. 7 urged Nagarjuna to purchase their HELAMIN products from Defendant No. 6 instead of importing it from France.
13. In Defendant No.6's written statement, the answering Defendant admitted the relationship between the said Defendant and Defendants NO.7 and 8, per paragraphs 14 and 15 of the written statement.

14. Therefore, the Defendants, including Defendants No. 7 to 9, have taken unfair advantage of the Plaintiffs' reputation and goodwill in the Helamin trademarks and have passed off their impugned goods as those of the Plaintiffs, causing damage to the Plaintiffs.
15. The Plaintiffs have filed the present suit for passing off, seeking an injunction against the defendants from manufacturing, selling, offering for sale, distributing importing/exporting, advertising products/service, bearing plaintiff No.1's trademark HELAMIN or any other mark deceptively similar thereto. The plaintiff seeks reliefs as prayed in paras (a), (b) and (c) of para 55 of the plaint.
16. Plaintiffs have reached a settlement with defendants No. 1 to 6 and the suit was decreed qua said defendants on 12.10.2017.
17. An interim injunction was passed by order dated 09.12.2015 allowing, inter alia, plaintiffs' I.A. No. 10720/2012 under Order 39 Rule 1&2 of CPC.
18. Defendant No.7 (Mr. Pierre Bezzoli), defendant No.8 (H2O Facilities SA), and Defendant No. 9 (Fineamin Chemicals) have been duly served in the present matter. Order dated 7.5.2013 records that defendants No.7 and 8 were duly served and order dated 24.10.2013 records that defendant No.9 was duly served.
19. By order dated 18.11.2013, defendant No.9's right to file its written statement was closed. By order dated 22.9.2014, defendants No.7 and 8's right to file written statements was closed and they were proceeded ex parte.

20. Now Rule 10 of order 8 of the CPC provides the procedure where the defendants have failed to present their written statement called for by the Court or where opportunity to file it also stands closed. The provision read as under:-

“10. Procedure when party fails to present written statement called for by Court.—
Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

21. As on 18.11.2013 the defendant No.9's right to file the written statement was closed and as on 22.09.2014 the right to file the written statement of defendant Nos.7 & 8 was closed, hence there is no reason why this Court should not pronounce the judgment against the defendant Nos.7, 8 and 9.

22. Even otherwise, Coordinate Bench of this Court in *Satya Infrastructure Ltd. and Ors. vs. Satya Infra & Estates Pvt. Ltd.* 2013 III AD (Delhi) 176 has held as under:-

“4. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according

any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record....."

23. Hence, this Court is of the view that the plaintiff is even otherwise, entitle to a decree under Order XIII-A of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 as the said provision empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim. Thus in view of the above the averments made in the plaint are admitted and a decree therefore, is passed in terms of para Nos.(a), (b), and (c) of para 55 of the plaint.
24. The costs of the suit is also awarded in favour of the plaintiff and against the defendants. Decree sheet be drawn.

YOGESH KHANNA, J

NOVEMBER 13, 2017

DU