

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

% Decided on: 15th October, 2019

+ **CS(COMM) 176/2019**

HAVELLS INDIA LIMITED

..... Plaintiff

Represented by: Ms. Prachi Agarwal, Ms. Ridhie Bajaj,
Advts.

versus

RAJEEV CHAWLA

..... Defendant

Represented by: Ex-parte

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

I.A. 9915/2019 (u/O VI R. 15A r/w O. VIII R 1&10 CPC by P)

1. By this application under Order VIII Rule 10 CPC plaintiff prays that the right of the defendant to file the written statement be closed.
2. Written statement by the defendant was not filed in time. The application under Order VIII Rule 1 CPC has not been pursued and was dismissed for non-prosecution on 10th October, 2019.
3. Hence, this application is allowed and the right of the defendant to file the written statement is closed.

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1. For the last two dates none has been appearing on behalf of the defendant. The right of the defendant to file written statement has also been closed.
2. Defendant is proceeded ex-parte.
3. By the present suit the plaintiff, inter alia, prays for a decree of permanent injunction restraining the defendant, its partners, proprietors,

officers, servants, agents, distributors, dealers, retailers or any other person acting for on their behalf from manufacturing, selling, offering for sale, advertising directly or indirectly in any manner with regard to products and services bearing the trademarks/logos LLOYD by themselves or with other variants, which trademark/ trade name/ domain name are deceptively similar to the plaintiff's trademark and the artistic style, lay out, get up, colour scheme, trade dress, etc. amounting to infringement of the plaintiff's trademarks as set out in para 33 of the plaint, amounting to passing off the defendant's goods and/or business as that of the plaintiff's, diluting or tarnishing the plaintiff's trademark, get up, colour combination, trade dress, etc. as also infringing the plaintiff's copyright therein, besides delivery up of impugned material including products, containers, dyes, labels, packaging materials, destruction thereof, declaration of the plaintiff's trademark/logo/ device LLOYD,  and  as a the plaintiff's well-known trademark, damages, rendition of accounts and costs.

4. Case of the plaintiff is that it was founded in the year 1958 by its founding director who commenced trading and operations in electrical goods. Thereafter the plaintiff started extensively manufacturing and distributing with its network across India and internationally amounting to enviable market dominance in number of products including Industrial & Domestic Circuit Protection Devices, Cables & Wires, Motors, Fans, Modular Switches, Home Appliances, Air Conditioners, Televisions, Electric Water Heaters, Power Capacitors, CFL Lamps, Luminaires for Domestic, Bathroom Hardware Products, Water Pumps, Commercial and Industrial Applications

etc. under multiple prestigious global brands such as HAVELLS, CRABTREE, STANDARD, PROMPTEC, QRG and LLOYD.

5. Plaintiff has a network of more than 4000 professionals, over 7575 dealers, 40 branches across India and around 10 manufacturing units in India, besides availability of its product worldwide in more than 40 countries. Plaintiff was the first company to get ISI Certification for complete range of CFLs and has acquired number of international certifications, like BASEC, KEMA, TUV Rheinland and CB, for its various products to expand research in the international arena.

6. To delve deeper into the use of consumer products, use of quality consumer products in home, plaintiff acquired the consumer Durables Business of LLOYD Electric and Engineering Limited in 2017, thereby entering into the field of consumer durables including Air-Conditioners, LED TV's, washing machines and other household appliances.

7. Plaintiff under its brand LLOYD offers a wide range of home appliances, including window and split air conditioners which offers rapid cooling while being energy efficient, designed with latest technological features and a variety of functions and features such as smart four way swing, low noise technology, fish fin design, clean air filter, etc. The LLOYD's air conditioners also come with a 5 Year warranty on compressor and upto a 5 star rating as per Bureau of Energy Efficiency norms. The air-conditioners under the LLOYD brand are currently imported and sold by the plaintiff company with each product and packaging displaying the prominent tagline 'A HAVELLS Brand'. Plaintiff's have recently started a manufacturing plant for LLOYD's air-conditioners in Ghilot, Rajasthan.

Plaintiff is also involved in a lot of CSR activities and is thus recipient of number of awards and accolades.

8. The plaintiff adopted the mark LLOYD in 1956 and is continuously using the same at least since 1957. The plaintiff also incorporated a new company in the year 2017 in the name and style of 'LLOYD CONSUMER PRIVATE LIMITED'. The trademark LLOYD is one of the plaintiff's flagship trademark, which was adopted in the year 1956 by the plaintiff's predecessor in title Fedders Lloyd Corporation Limited (FLCL) now known as Fedders Electric & Engineering Limited. The trademark LLOYD has been extensively used for 60 years resulting in acquiring distinctiveness and goodwill associated with the trademark. The plaintiff has acquired Lloyd Electric and Engineering Limited's entire consumer durable business infrastructure, people, distribution network including but not limited to absolute, exclusive ownership and right to all intellectual property of brand Lloyd, logo, trademark, goodwill and attendant rights. The uniqueness in adoption as well as its long and continuous use has led to the exclusive association of the trademark LLOYD with the plaintiff. It is claimed that the plaintiff's brand LLOYD is now part of the top 3 players in the air conditioning industry and the plaintiff has launched a unique 4D air-conditioner incorporating latest technology.

9. The plaintiff has also placed on record documents in support of its claim as noted above and has also claimed the constant rise in its sales figures and has claimed that the gross sales turnover in the financial year 1997-98 was ₹57.30 crores which has arisen to ₹3022.42 crores in the financial year 2016-17. The plaintiff has also widely promoted its trademark LLOYD through its various social and audio-visual medium including print and social

media, internet presence, etc. Copies of the sales invoices, certificate of chartered accountant evidencing sales and promotional expenses in support of the use of trademark and goodwill have also been placed on record. Plaintiff has also placed on record documents to show that it is a recipient of numerous awards and accolades for its trademark LLOYD brand value and has been associated with various events.

10. Plaintiff has developed a mobile application named 'MyLloyd' and has been using under the **MyLloyd App**. The MyLloyd app enables the consumers to access the wide range of plaintiff's Lloyd branded products and services at their fingertips. The website of the plaintiff <https://www.havells.com/> and <https://www.mylloyd.com/> are heavily visited and accessible to thousands of internet users throughout the world including Indian consumers. Along with the documents in support of the claim hereinabove the plaintiff has also filed necessary certificate under Section 65B of the Indian Evidence Act as also declaration on oath under Order XI Rule 6(3) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015.

11. Plaintiff has been assigned the trademark LLOYD by way of assignment deed dated 8th May, 2017 by virtue of which the plaintiff has an absolute, exclusive ownership and right of all the intellectual properties of brand LLOYD logo, trademark, goodwill, etc. The plaintiff has its registration of trademark LLOYD in 30 jurisdiction outside India. Further the plaintiff besides its trademark LLOYD,  and **LLOYD**, used for its various products and services also uses the tagline 'A HAVELLS product'

clearly and unambiguously on its air-conditioners. The essential features of the **LLOYD** trademarks of the plaintiff are:

“i. The use of cursive font to write LLOYD with a unique emphasis to the capital representation of the letters ‘LL’ and extended ‘Y’ cursive letter with a half opened D letter.

Further, the blue colored logo of the LLOYD trademark



incorporates the following features.

i. Use of cursive font to write LLOYD with a unique emphasis to Y and half opened D letter;

ii. The use of royal blue, black and white coloured

combination in the logo



iii. The use of white font to inscribe LLOYD against the royal blue background.”

12. Grievance of the plaintiff against the defendant is that defendant is proprietor of a firm trading under the name and style of Chawla Refrigeration engaged in business of sale and electrical appliances and in the last week of March, 2019 while conducting a routine market surveillance one of the plaintiff's sales executive came across defendant selling split air-conditioners bearing the plaintiff's mark LLOYD at a very low price. To ascertain better particulars, plaintiffs representative visited the shop of defendant on 29th March, 2019 and inquired about the LLOYD air-conditioner when it found that the defendant was selling indoor unit of the LLOYD split air-conditioner for sale without the outdoor unit and that the same could be connected to any outdoor unit. Thus, the plaintiff's representative purchased a 1.00 Ton indoor unit for split AC/ 12 K – 770MM-BQ for ₹5500 vide invoice No.18757 from the defendant.

13. On internet search it was found that the defendant was maintaining a website www.chawlaref.com. The defendant was using the plaintiff's

trademark LLOYD in identical cursive font and style as **LLOYD**. It is thus claimed that the adoption and use by the defendant of the impugned mark **LLOYD** is in clear violation of the plaintiff's statutory rights and that the defendant is selling counterfeit products and unlike that of the plaintiff's does not deliberately display the tagline 'A HAVELLS Brand'. It is claimed that not only the act of the defendant is malafide and violative of the plaintiff's right but poses immense danger and hazard to the human life without the essential features and mismatching of the outdoor unit and indoor unit as tabulated under:

“Consequences of mismatched ODU and IDU connected together.			
Wrong component used	Technical issues	Impact on AC	Impact to the customer
Wrong Refrigerant	If high pressure refrigerant is used with normal pressure IDU (Normal refrigerant pressure 270 PSI but high pressure refrigerant pressure 600 PSI)	Copper tubing bursting	Bursting may lead to physical injury
	Flammable refrigerant	May catch fire in case of electrical spark	Fire Hazard
Wrong Wiring	HVIR fail	Shock on touching ODU	Electrical shock
Wrong Wiring	Wrong connection	may lead to short circuit which will cause fire	Fire Hazard
Wrong compressor and coil configuration	Small compressor or small condenser or improper refrigerant cycle balancing	Low cooling	Inconvenience to the customer
	Big compressor or small condenser or improper refrigerant cycle balancing	High energy consumption	Inconvenience to the customer
	Small compressor or small condenser or improper refrigerant cycle balancing	Tripping at high outside temperature	Inconvenience to the customer

14. From the pleadings of the plaintiff in the plaint as also the documents enclosed with the plaint along with the necessary certificate, the plaintiffs have clearly made out a case for grant of injunction in terms of prayer (i), (ii), (iii) and (iv) as the defendant is violating the rights of the plaintiff in its trademark as well as copyright.

15. In the present suit the plaintiff also prays for a decree of declaration that the trademark/logos/ devices LLOYD,  and  are well-known trademarks.

16. Section 2(zg) which defines a “well-known trademark” and Section 11(6) of the Trademark Act read as under:

“2(zg) “well-known trade mark”, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

.....

11(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

- (i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;*
- (ii) the duration, extent and geographical area of any use of that trade mark;*

- (iii) *the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;*
- (iv) *the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark;*
- (v) *the record of successful enforcement of the rights in that trade mark; in particular, the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.”*

17. In the decision reported as (2009) 41 PTC 284 (Del) Rolex Sa Vs. Alex Jewellery Pvt. Ltd. & Ors. this Court dealing with a well-known trademark held:

“15. Section 2(4)(c) defines a well known trademark as the one which in relation to any goods, means a mark which has become so to the substantial segment of the public which uses such goods that the use of such mark in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person using the mark in relation to the first mentioned goods. In my view the segment of the public which uses the watches of the category/price range as the watches of the plaintiff, ROLEX is a well known trademark. The said segment of the public if comes across jewellery/artificial jewellery also bearing the trademark ROLEX is likely to believe that the said jewellery has a connection to the plaintiff.

16. Yet another provision in the Act, though for the guidance of the Registrar but in relation to well known trademarks is to be found in Section 11(6) of the Act. Upon testing the trademark of the plaintiff on the touchstone of the ingredients of the said provision also, I find the said trademark of the plaintiff to be

satisfying the test of a well known trademark. The documents filed by the plaintiff i.e., the advertising done in the media in India since 1947 and particularly in years immediately preceding the suit, registrations obtained show that relevant section of the public in India had knowledge of the trademark ROLEX in relation to the watches. The pleadings of the plaintiff and which are not contested also show that the plaintiff for the last nearly one century has been using the said trademark spread over nearly the entire developed/developing world. The advertisements of the plaintiff had appeared in the magazines in this country even when there were import restrictions. The plaintiff has filed documents to show registration of the trademark in a large number of countries and also to show successful enforcement of its rights with respect to the said trademark.

20. Over the years and very quickly in recent times, the international boundaries are disappearing. With the advent of the internet in the last over ten years it cannot now be said that a trademark which is very well known elsewhere would not be well known here. The test of a well known trademark in Section 2 is qua the segment of the public which uses such goods. In my view any one in India, into buying expensive watches, knows of ROLEX watches and ROLEX has a reputation in India. Not only so, to satisfy the needs/demands of consumers in different countries, the well known international brands which were earlier available at prices equivalent to prices in country of origin and which owing to the exchange rate conversion were very high, have adapted to the Indian situation and lowered prices. A large number have set up manufacturing facilities here and taken out several variants. Thus, merely because today the price of a ROLEX watch may be much higher than the price of items of jewellery of the defendants as argued, cannot come in the way of the consumer still believing that the jewellery is from the house of the plaintiff. Also, there can be no ceiling to the price at which the defendants will continue to sell their jewellery. The defendants have claimed to be selling rolled gold jewellery; with the price of gold soaring, there is no certainty

that the pieces of artificial jewellery of the defendants would not also be in the same range as the watches of the plaintiff. Even otherwise, the trend in modern times has been towards artificial/semi precious jewellery. In fact, the attraction to gold is confined to this part of the world only. In India also today there are several brands of artificial jewellery/semi precious jewellery whose brand value and/or prices are quite comparable to the gold jewellery of the conventional gold smiths

24. The goods of the plaintiff may lose their sheen to the strata of the society for which they are intended if such strata finds the goods in the same brand name even though not from the house of the plaintiff being available for a much lower price. The goods of the plaintiff would then cease to be a status symbol or a fashion statement. Undoubtedly, the same would be to the detriment of the plaintiff. Having found a prima facie case in favour of the plaintiff and irreparable injury to be caused to the plaintiff by allowing the defendant to continue using the trademark, I also find the element of balance of convenience to be satisfied in the present case. The registration of the mark of the plaintiff is over 90 years prior to the claimed commencement of the use by the defendant. Even if the defendant, at the time of commencing the use, did not know of the inherent risk in adopting the well known trade mark, the defendant, at least, immediately on applying for registration and on opposition being filed by the plaintiff became aware of the perils in such use. Thus, use by the defendant of the mark is for short time only and use during the period of opposition is of no avail. The mark has got no relation to the jewellery being marketed by the defendants. Unless the defendant is deriving any advantage of the goodwill/brand value of the plaintiff and which it is not entitled to, it ought not to make any difference in the business of the defendants if the said jewellery is sold under a mark other than ROLEX.”

18. Dealing with the “well-known trademark”, this Court in the decision reported as 2011 (46) PTC 244 (Del) Tata Sons Ltd. Vs. Manoj Dodia & Ors. held:

“5. A well known trademark is a mark which is widely known to the relevant general public and enjoys a comparatively high reputation amongst them. On account of advancement of technology, fast access to information, manifold increase in international business, international travel and advertising/publicity on internet, television, magazines and periodicals, which now are widely available throughout the world, of goods and services during fairs/exhibitions, , more and more persons are coming to know of the trademarks, which are well known in other countries and which on account of the quality of the products being sold under those names and extensive promotional and marketing efforts have come to enjoy trans-border reputation. It is, therefore, being increasingly felt that such trademark needs to be protected not only in the countries in which they are registered but also in the countries where they are otherwise widely known in the relevant circles so that the owners of well known trademarks are encouraged to expand their business activities under those marks to other jurisdictions as well. The relevant general public in the case of a well known trademark would mean consumers, manufacturing and business circles and persons involved in the sale of the goods or service carrying such a trademark.

6. The doctrine of dilution, which has recently gained momentous ,particularly in respect of well known trademarks emphasises that use of a well known mark even in respect of goods or services, which are not similar to those provided by the trademark owner, though it may not cause confusion amongst the consumer as to the source of goods or services, may cause damage to the reputation which the well known trademark enjoys by reducing or diluting the trademark's power to indicate the source of goods or services.

7. Another reason for growing acceptance of trans-border reputation is that a person using a well known trademark even in respect of goods or services which are not similar tries to take unfair advantage of the trans-border reputation which that brand enjoys in the market and thereby tries to exploit and capitalize on the attraction and reputation which it enjoys amongst the consumers. When a person uses another person's well known trademark, he tries to take advantage of the goodwill that well known trademark enjoys and such an act constitutes an unfair competition.

8. The concept of confusion in the mind of consumer is critical in actions for trademark infringement and passing off, as well as in determining the registrability of the trademark but, not all use of identical/similar mark result in consumer confusion and, therefore, the traditionally principles of likelihood of confusion has been found to be inadequate to protect famous and well known marks. The world is steadily moving towards stronger recognition and protection of well known marks. By doing away with the requirement of showing likelihood of confusion to the consumer, by implementing anti-dilution laws and recognizing trans-border or spill over reputation wherever the use of a mark likely to be detrimental to the distinctive character or reputation of an earlier well known mark. Dilution of a well known trademark occurs when a well known trademark loses its ability to be uniquely and distinctively identify and distinguish as one source and consequent change in perception which reduces the market value or selling power of the product bearing the well known mark. Dilution may also occur when the well known trademark is used in respect of goods or services of inferior quality. If a brand which is well known for the quality of the products sold or services rendered under that name or a mark similar to that mark is used in respect of the products which are not of the quality which the consumer expects in respect of the products sold and/or services provided using that mark, that may evoke uncharitable thoughts in the mind of the consumer about the trademark owner's product and he can no more be confident

that the product being sold or the service being rendered under that well known brand will prove to be of expected standard or quality.

9. *Article 6bis of Paris Convention, 1967 enjoined upon the Countries of the Union, subject to their legislation so permitting or at the request of the interested parties, to refuse or to cancel the registration and to prohibit the use of trademark which constitutes a representation and imitation or translation liable to create confusion of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of Convention and used for identical or similar goods. This provision was also to apply when the essential part of the mark constituted a reproduction of any such well known mark or an imitation liable to create confusion therewith. The prohibition against use of a well known trademark, under Paris Convention, was, thus, to apply only when the impugned use was in respect of identical or similar goods. Vide Article 16 of TRIPS Agreement 1994, it was decided that Article 6bis of Paris Convention, 1967 shall apply mutatis mutandis to services as well as to goods or services, which are not similar to those in respect of which a trademark is registered, provided that the use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and the interests of the owner of the registered trademark and are likely to be damaged by the impugned use. It was further decided that in determining whether the trademark is well known, the members shall take account of the knowledge of the trademark in relevant sectors of the public, including knowledge in the member concerned which has been obtained as a result of the promotion of the trademark. Thus, the TRIPS Agreement, 1994 brought about a material change by prohibiting use which constitutes a representation or imitation and is likely to create confusion even if such use is in relation to altogether different goods or services, so long as the mark alleged to have been infringed by such use is a well known mark. This Article, thus, grants*

protection against dilution of a trademark, which may be detrimental to the reputation that the business carried under a well known trademark enjoys.

10. *Well known marks and trans-border reputation of brands was recognized by Courts in India, even before Trade Marks Act, 1999 came into force. In , the manufacturers of Mercedes Benz sought an injunction against the Defendants who were using the famous "three pointed star in the circle" and the word "Benz". The Court granted injunction against the Defendants who were using these marks for selling apparel. Similarly, in Whirlpool Co. and Anr. v. N.R. Dongre (1996) PTC 415 (Del.) the Plaintiff Whirlpool had not subsequently registered their trademark after the registration of the same in 1977. At the relevant time, the Plaintiff had a worldwide reputation and used to sell their machines in the US embassy in India and also advertised in a number of international magazines having circulation in India. However, the Defendant started using the mark on its washing machines. After an action was brought against them, the Court held that the Plaintiff had an established "transborder reputation" in India and hence the Defendants were enjoined from using the same for their products. In the Kamal trading Co. v. Gillette UK Limited (1998 IPLR 135), injunction was sought against the Defendants who were using the mark 7'O Clock on their toothbrushes. This was further reaffirmed by the Bombay High Court, which held that the Plaintiff had acquired an extensive reputation in all over the world including India by using the mark 7'O Clock on razors, shaving creams. The use of an identical mark by the Defendant would lead to the customer being deceived."*

19. Analyzing on the touchstone of the guidelines laid down for determining a well-known mark, the trademark LLOYD, **LLOYD** and



has been in use for more than 60 years now and has a trans-border reputation. The sales figures and the promotional figures also exhibit the

high quality of goods and services under the trademark and the trademark is a commonly known trademark with the consumers which include and are not limited to the household consumers in number of its electrical goods. Hence, a decree in favour of the plaintiff and against the defendant in terms of prayer (vii) declaring that the trademark/logos/ devices LLOYD,

LLOYD and  are well-known trademarks is also required to be passed in favour of the plaintiff.

20. Plaintiff has led no evidence to prove damages caused to him. Hence no decree in terms of prayer (viii) can be passed.

21. As regards cost, the plaintiff has filed an affidavit indicating that the cost incurred by the plaintiff including Court fees, appointment of Local Commissioners, miscellaneous expenses and the fees of the lawyers which amounts to total sum of ₹9,36,243/-.

22. Suit is accordingly decreed in terms of prayer (i), (ii), (iii), (iv) and (vii) of para 87 of the plaint in favour of the plaintiff and against the defendant. Cost of ₹9,36,243/- is awarded in favour of the plaintiff and against the defendant.

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Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

OCTOBER 15, 2019
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