IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 345 OF 2026
IN
COMMERCIAL IP SUIT NO. 7 OF 2026

John Cockerill Hamon SA. ...Applicant/Plaintiff

Versus

Hamon Cooling Systems Private Limited & Anr. ...Defendants/Respondents

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Mr. Janak Dwarkadas, Senior Advocate, a/w. Mr. Hiren Kamod, Ms. Namrata Vinod, Mr. Ashutosh Kane, Ms. Sumana Roychowdhury and Mr. Kanak Kadam i/b. W. S. Kane & Co., for the Applicant/Plaintiff.

Dr. Veerendra Tulzapurkar, Senior Advocate, a/w. Mr. Hitesh Mutha, Mr. Sajid Mohamed, Mr. Sumit Raghani and Ms. Dikshita Pawar i/b. Argud Partners, for the Defendants.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 7th APRIL 2026.

PRONOUNCED ON : 6th JULY 2026.

P.C.

1. The captioned Suit has been filed *inter alia* for infringement and passing off in respect of the mark HAMON.

2. It is the Plaintiff's case that the Plaintiff is the proprietor of the following marks, all of which are registered and, for convenience, are referred to as the "**HAMON Marks",** viz.

Mark	**Registration No.**	**Class**	**Obtained on**	**User**	**Valid upto**
HAMON (word)	495228	7	1st August 1988 (Engetra S.A.)	1st January 1963	1st January 2029
HAMON (word)	495229	11	1st August 1988 (Engetra S.A.)	'Proposed to be used'	1st August 2029
 (device)	1710809	7, 11, 19, 37, 42	16th July 2008 (HCI)	1st March 1999	16th July 2028
HAMON (device)	1836422	19, 37, 42	3rd July 2009 (HCI)	'Proposed to be used'	3rd July 2029
	495230	7	1st August 1988	'Proposed to be used'	1st August 2009

3. It is the Plaintiff's case that Defendant No. 1, despite not having any right, title, or interest in the mark HAMON, is using "HAMON COOLING" and "HCS HAMON COOLING" ("**the impugned marks"**) in the course of its trade and also as a part of its corporate name. It is thus that the Plaintiff has filed the

captioned Suit, claiming infringement of the "HAMON" Mark and also for passing off the goods and services of Defendant No. 1 as those of the Plaintiff.

4. The Plaintiff has, by way of the present Interim Application, sought the following relief:

> "*a. that pending the hearing and final disposal of the present Suit the Defendants by itself, its directors, its servants, agents, representatives, distributions, stockists and all other persons claiming by, through or under it be restrained by a temporary order and injunction of this Hon'ble Court from in any manner, directly or indirectly, using, affixing, the impugned mark "HAMON" and in respect of its goods/services as a mark, corporate name, domain name, email, business name, trade name and/or trading style etc. or any other mark, corporate name, domain name, email, business name, trade name and/or trading style etc. containing and/or incorporating the word `HAMON' or any other mark deceptively similar to that of the Plaintiffs said trademark "HAMON" and in respect of the Defendants' goods or service and/or as a part of its trade name/corporate name, domain name so as to infringe the Plaintiff's registered trade mark "HAMON" bearing nos. 495229, 495228, 1710809 and 1836422;*
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> *b. that pending the hearing and final disposal of the suit, the Defendants by itself, its directors, its servants, agents, representatives, distributions, stockists and all other persons claiming by, through or under it be restrained by a temporary order and injunction of this Hon'ble Court from in any manner, directly or indirectly, using, affixing, the impugned mark "HAMON" and in respect of its goods as a mark, business name, trade name, domain name and/or trading style etc. or any other mark, business name, trade name, domain name and/or trading style etc. containing and/or incorporating the word `HAMON' and/or deceptively similar to the Plaintiff's mark `HAMON' and so as to pass-off or enable others to*

pass-off the Defendants' goods and business as and for the goods and business of the Plaintiff or as emanating from or affiliated and be further restrained from in anyway associating and/or connecting itself with the Plaintiff by use of the mark `HAMON' and/or any other deceptively similar mark thereto;

c. that pending the hearing and final disposal of the present Suit, the Defendants be ordered and directed to transfer the domain name viz www.hamonindia.com and or any other domain name containing/incorporating the word/mark `HAMON' and or any other similar/deceptively similar mark/name to the Plaintiff by taking appropriate steps at its own cost and until such transfer is made in the name of the Plaintiff the Defendants be restrained from transferring and or creating any third party rights and or in dealing in any manner with the said domain name with third parties;

d. for ad-interim reliefs in terms of prayers (a), (b) and (c), above;

e. for costs of the Suit;

f. for such further and other reliefs as the nature and circumstances of the case may require."

Submissions on behalf of the Plaintiff:

5. Mr. Dwarkadas, learned Senior Counsel appearing on behalf of the Plaintiff at the outset pointed out that HAMON had been adopted as a trade mark by ENGETRA S.A. ("ENGETRA"), a Belgian entity, in the year 1963 in respect of goods falling in Classes 7 and 11, including, but not limited to, air

cooling apparatus, air conditioning apparatus, air condensers, water heaters, heat exchangers, etc.

6. He submitted that in the year 1988, in order to secure statutory rights in India, ENGETRA applied for and obtained registration of the trade mark HAMON (word *per se*) bearing registration nos. 495228 and 495229 in Classes 7 and 11, and also for the device mark "  " bearing registration nos. 495230 and 495231 in Classes 7 and 11.

7. On 15th September, 1999, ENGETRA S.A. executed a Deed of Assignment assigning its exclusive right, title, and interest in the HAMON Marks bearing registration nos. 495228, 495229, and 495230, along with the goodwill, to HCI.

8. Thereafter, Hamon & CIE (International) S.A. ("**HCI**") acquired approximately a 70% stake in an Indian Company, i.e., Thermopack Engineers Pvt. Ltd. Following this acquisition, Thermopack Engineers Pvt. Ltd. was renamed Hamon Thermopack Engineers Pvt. Ltd. and in

1998-1999, Thermopack Engineers Pvt. Ltd. changed its name to Hamon Thermopack ("**Hamon Thermopack**"). On 12th April 1999, HCI acquired 100% of the shareholding in Hamon Thermopack. Thus, HCI had full control and ownership of Hamon Thermopack.

9. In the year 2007, Hamon Thermopack entered into a joint venture with Shriram EPC Ltd. for collaboration on cooling tower engineering projects. On 16th July 2008 and 3rd July 2009, HCI filed applications for registration of the HAMON Marks in India. Shriram EPC acquired 50.01% equity in Hamon Thermopack, due to which Hamon Thermopack was renamed Hamon Shriram Cottrell Pvt. Ltd. Shriram Industrial Holdings thereafter acquired Shriram EPC's 49.99% stake in Hamon Shriram through an internal share transfer in the year 2013.

10. In the year 2019-2020, HCI increased its shareholding in Hamon Shriram to 99.16%, and Hamon Shriram was thereafter renamed Hamon Cooling Systems Pvt. Ltd., i.e., Defendant No. 1. Mr. Dwarkadas then invited my attention to Exhibit "G" to the Plaint as well as a chart in paragraph 13 of the

Plaint to point out that Defendant No. 1 had achieved an annual turnover of Rs. 2,19,51,37,850/- in the financial year 2023-24, and Defendant No. 2, i.e., Hamon India, had a turnover of Rs. 9,81,417/- in the year 2023-24, and that the net worth of Defendant No. 1 was Rs. 36,40,52,516/-. He thus submitted that HCI was using the HAMON Marks on an extensive scale throughout the Indian market, due to which the HAMON Marks had acquired tremendous goodwill and reputation throughout India and had become the valuable assets of HCI.

11. Mr. Dwarkadas then submitted that in the year 2022, HCI had initiated judicial reorganisation proceedings in Belgium, which were subsequently converted into bankruptcy proceedings in which three trustees were appointed by the Belgian Court to deal with the assets of HCI.

12. He pointed out that on 20th May 2022, CMI France, a subsidiary of the John Cockerill Group, submitted a bid to, *inter alia*, acquire substantially all of the intellectual property assets of HCI. He submitted that the bid specifically covered the entire portfolio of HAMON brands and trade marks, the ERP,

patents, the website and HCI's equity interests in companies forming part of the Esindus subgroup carrying on the cooling (wet cooling) and water management (water solutions) business of the erstwhile Hamon Group. He submitted that although the equity securities of the Esindus subgroup belonging to HCI initially formed part of the bid submitted by CMI France, the Trustees of HCI ultimately sought and obtained approval only for the transfer of HCI's assets, excluding the Esindus subgroup shares.

13. On 27th May, 2022, "Le Tribunal de Commerce Spécialisé de Bobigny", i.e., the Specialised Commercial Tribunal Bobigny, issued an order for the transfer/assignment of the assets belonging to Hamon Thermal Europe, France, and certain assets of the French company Compagnie Financiers Hamon for the benefit of CMI France. Consequently, on 30th May 2022, the Trustees of HCI filed a petition with the Official Receiver in the bankruptcy proceedings, requesting authorisation to sell HCI's assets (excluding Esindus sub-group shares) to CMI France, acting for and on behalf of John Cockerill Hamon SA. This application, he pointed out, was allowed on 1st June, 2022.

He also relied upon material from the Hamon group website showing that Defendant No. 1 formed part of the Esindus subgroup within the wider Hamon group structure.

14. Mr. Dwarkadas submitted that on 2nd June 2022, CMI France transferred €1,100,000 to the Trustees as a guarantee/consideration for the acquisition of the assets of HCI (except Esindus securities), including all the intellectual property rights pertaining to the HAMON marks. He then pointed out that on 25th July 2022, a Transfer Agreement was executed between HCI, acting through its Court-appointed trustees, and the Plaintiff, which he pointed out was effective from 1st June 2022. He also pointed out that Clause 1.1.1.1 of the Transfer Agreement made clear that the entire portfolio of brands held by HCI, including all brand names and trade names attached to the HAMON brands, stood transferred to the Plaintiff.

15. He then invited my attention to Clause 6 of the Transfer Agreement and pointed out that, at the request of the Trustees, the Transferee, i.e., the Plaintiff, agreed to pay an additional consideration of €500,000 over and

above the agreed purchase price to permit certain Hamon group companies, which had not been acquired by the Plaintiff group, to continue using the HAMON brands for a limited period solely to enable them to complete their ongoing projects. He pointed out that Clause 1.1.1.2 of the Transfer Agreement expressly describes this arrangement as the "Brand Usage Right". He submitted that Defendant No. 1 was one such company who was permitted to use the HAMON brand to complete ongoing projects.

16. Mr. Dwarkadas submitted that by virtue of the Transfer Agreement dated 25th July 2022, HCI transferred to the Plaintiff all its rights, title, interest and goodwill in the HAMON Marks worldwide, including in India. He submitted that, while the Plaintiff had not acquired the Indian business of the Hamon group nor had the Plaintiff acquired Defendant No. 1, the Plaintiff had acquired all the statutory rights in respect of the HAMON Marks worldwide, including in India, from HCI. Mr. Dwarkadas pointed out that this was confirmed and reiterated by HCI in a Confirmatory Deed dated 18th April 2024.

17. Mr. Dwarkadas, then to highlight what he submitted was the dishonest conduct of Defendant No. 1, pointed out that Defendant No. 1 had, on 18th August 2022, maliciously filed a trade mark application bearing No. 5573155 in Class 7 for the mark "HAMON COOLING" on a proposed-to-be-used basis.

18. He then pointed out that on 30th September, 2022, a Share Sale Agreement ("**SSA**") was executed between one Mr. Akhileshwar G. Chorasiya, Defendant No. 2 and Hamon (Netherlands) B.V., whereby the entire 99.16% equity stake of Defendant No. 2 in Defendant No. 1 was transferred to Mr. Chorasiya. He took pains to point out that the SSA clearly marked the disassociation of Defendant No. 1 from the Hamon Group. He also pointed out that the SSA was restricted only to the transfer of the shares and that none of the intellectual property rights, brand ownership, or logo rights in the HAMON marks were in any manner transferred to Mr. Chorasiya.

19. He further pointed out that under Clause 2.1(a)(iii) of the SSA, Mr. Chorasiya was obliged to fulfil the existing contracts/projects executed or

being executed by Defendant No. 1 as specifically listed in Schedule 4 of the SSA. He reiterated that, since Defendant No. 1 had not been acquired by the Plaintiff, as per Clause 1.1.1.2 of the Transfer Agreement, only a temporary right to use the HAMON brands was granted to Defendant No. 1 solely for the purpose of completing the pending projects, which were more particularly set out in Schedule 4 of the SSA.

20. Mr. Dwarkadas then invited my attention to the Plaint to point out that the Plaintiff had in paragraph 24 specifically pleaded as follows:

> *"The Plaintiff agreed to increase the purchase price of the IPR belonging to the curators/trustees in return for a limitation of the Plaintiff's undertaking to grant, under certain conditions, a temporary right to use the Hamon brands and/or the ERP to Hamon Group companies not taken over by the JCG, for the limited and sole purpose of completing the projects in progress (as was then) and did not grant any broader rights to the Defendants to use the trade marks."*

He took pains to point out that Defendant No. 1 had not denied the Plaintiff's above contention.

21. He then also submitted that Defendant No. 1's conduct before the Trade Marks Registry was wholly inconsistent with the stand taken by Defendant No. 1 in the present proceedings. In support of his contention, he invited my attention to the Examination Report dated 31st January 2023 issued by the Registry in respect of the Application for registration made by Defendant No. 1 for the mark "HAMON COOLING". He pointed out that the Plaintiff's HAMON Mark bearing Registration No. 495228 was cited as a conflicting mark under Section 11 of the Trade Marks Act. He submitted that Defendant No. 1 had, in the Affidavit in Reply to the Examination Report, merely sought to distinguish the proposed mark, "HAMON COOLING", from the Plaintiff's registered HAMON Mark and had not claimed prior use nor asserted any independent right and/or superior right over the proposed marks. He thus submitted that the stand taken by Defendant No. 1 in the present proceedings, in which Defendant No. 1 had asserted independent and long-standing rights in the HAMON Mark, was plainly an afterthought and

was wholly inconsistent with the stand taken by Defendant No. 1 before the Trade Marks Registry.

22. Mr. Dwarkadas submitted that on 30th May, 2024, the Plaintiff had filed an application before the Trade Marks Registry to bring the name of the Plaintiff on record as the subsequent proprietor of the HAMON Marks. He then pointed out that the Trade Mark Registry had, on 9th December 2024, rejected the Application filed by Defendant No. 1 for "HAMON COOLING". However, despite this, Defendant No. 1 had, on 11th December, 2024, mischievously filed another application bearing No. 6751645 in Class 7 for the word mark "HCS HAMON COOLING" and trade mark applications under Nos. 6751644 and 6751646, both in Class 11, for the word marks "HAMON COOLING" and "HCS HAMON COOLING", respectively, on a proposed to be used basis.

23. He submitted that on 17th April, 2025, despite the expiry of the limited and temporary "Brand Usage Right" granted to Defendant No. 1 under the Transfer Agreement, Defendant No. 1 had brazenly continued its

unauthorised use of the HAMON Marks in its corporate name, goods, services, and communications. He thus submitted that the Plaintiff issued a cease and desist notice to Defendant No. 1. He submitted that instead of complying with the said notice, Defendant No. 1 brazenly continued its use of the impugned marks. He submitted that such blatant and unauthorised use of the HAMON trade mark clearly amounted to infringement under the provisions of Sections 29(1), 29(2), and 29(5) of the Trade Marks Act, 1999, as well as passing off.

24. He pointed out that Defendant No. 1 was using the impugned marks, i.e., "HAMON COOLING" and "HCS HAMON COOLING", both of which contain the whole of the Plaintiff's registered trade mark "HAMON" as their leading, essential, and prominent feature. He submitted that Defendant No. 1 also simultaneously continued to operate the domain name www.hamonindia.com and email addresses such as sales@hamonindia.com which contains the Plaintiff's registered trade mark HAMON in its entirety,

and was also using the impugned marks in respect of goods and services that are identical to those of the Plaintiff.

25. Mr. Dwarkadas then invited my attention to two emails received by the Plaintiff, one from Technip (annexed at Exhibit "P" to the Plaint) and the other from Relysolutions (annexed at Exhibit "F" to the Rejoinder), to point out that the use of impugned marks by Defendant No. 1 had in fact resulted in actual confusion. He then pointed out from the emails that they set out specific instances of confusion and also sought a clarification from the Plaintiff with respect to the ownership and use of the HAMON Marks by Defendant No. 1. He submitted that these emails demonstrated that Defendant No. 1 had continued to hold itself out as being associated with the HAMON brand and business, thereby misrepresenting itself to customers and to persons in the trade.

26. Mr. Dwarkadas submitted that it was clear from the conduct of Defendant No. 1 that the intention of Defendant No. 1 was to ride upon the Plaintiff's reputation and goodwill in the HAMON Marks. He submitted that the very

fact that Defendant No. 1 had applied for registration of the marks "HAMON COOLING" and "HCS HAMON COOLING", on a proposed-to-be-used basis, was an admission of the fact that Defendant No. 1 did not have any independent subsisting legal right to use HAMON.

27. Mr. Dwarkadas also submitted that the Plaintiff's chain of title of the ownership and proprietorship of the HAMON Marks was clear and in light of the Transfer Agreement, pursuant to which the Plaintiff had acquired all right, title, interest and goodwill in the HAMON Marks. He thus submitted that the Plaintiff, having stepped into the shoes of HCI, who was the prior owner and proprietor in respect of the HAMON Marks, had become entitled to enjoy all the right, title and interest that HCI had in the HAMON Marks, including the right to claim prior adoption, as the registration of the HAMON word mark dated back to the year 1963.

28. He submitted that the Plaintiff had at all times acted consistently as the successor-in-title and proprietor of the HAMON Marks. He pointed out that the Trade Marks Registry had already recorded the name of the Plaintiff in

respect of the "HAMON device mark" bearing Registration Mark No. 1836422 and that, although the application filed by the Plaintiff in respect of the other HAMON Marks was pending, the pendency of such applications did not in any manner affect the Plaintiff's rights as the successor-in-title and proprietor of the HAMON Marks to file a Suit for infringement and passing off.

29. In support of this contention, Mr. Dwarkadas placed reliance upon the decisions in ***SKOL Breweries Ltd. v. Som Distilleries and Breweries Ltd & Anr***[1] and ***J.K. Jain & Others v. Ziff-Davies Inc***[2] from which he pointed out that even prior to, or pending an application to register an assignee as the proprietor of the registered Trade Mark, the Court is entitled to grant interlocutory as well as final relief in an infringement action instituted by such assignee. He further pointed out that Defendant No. 1 had admittedly not claimed any assignment nor any title to the HAMON Marks through HCI and was therefore a complete stranger to the Plaintiff's chain of title. He

[1] 2010 (42) PTC 389 (Bom).
[2] 2000 (56) DRJ (Suppl) 810 (SC).

then placed reliance upon the decision in ***Parksons Cartamundi (P) Ltd. v. Suresh Kumar Jasraj Burad***,[3] to submit that in these facts, Defendant No. 1 could not be permitted to impeach the validity of the Transfer Agreement or the Confirmatory Deed.

30. Mr. Dwarkadas then reiterated that Clause 1.1.1.1 of the Transfer Agreement clearly covers the Indian registrations in the HAMON marks. He thus submitted that the said marks were therefore clearly and sufficiently transferred to the Plaintiff. He also reiterated that, vide the SSA, no property rights were assigned or transferred to Mr. Chorasiya. He thus submitted that the Plaintiff was clearly the sole proprietor of the HAMON Marks, and the use of impugned marks by Defendant No. 1 plainly amounted to infringement and passing off.

31. Mr. Dwarkadas submitted that the balance of convenience was plainly in favour of the Plaintiff since the Plaintiff is the lawful proprietor of the HAMON Marks in India. He submitted that Defendant No. 1 did not have

[3] 2012 SCC OnLine Bom 438.

any right, title or interest in HAMON or the HAMON Marks, as was evident from the fact that Defendant No. 1 had filed applications for registration of the impugned marks on a proposed-to-be-used basis. He submitted that if the injunction prayed for was not granted, Defendant No. 1 would effectively be permitted to continue to project itself in the market as being associated with the Plaintiff and/or passing off its goods and services as being those of the Plaintiff. He submitted that this would cause confusion in tenders and/or projects and also divert business opportunities away from the Plaintiff to Defendant No. 1. He submitted that this confusion and deception amongst members of the public and trade alike would cause irreparable injury to the Plaintiff's reputation and goodwill, which could not be compensated for in damages.

32. Conversely, Mr. Dwarkadas submitted that Defendant No. 1 would not suffer any damage or hardship if restrained from using the impugned marks. He pointed out that Defendant No. 1 had, since at least April 2024, upon receipt of the cease-and-desist notice, been put to notice that its use of the HAMON

Mark was illegal and unauthorised. He also submitted that post-September 2022, Defendant No. 1 could have adopted a distinct brand identity of its own; instead, Defendant No. 1 chose to continue trading upon the Plaintiff's reputation by persisting with HAMON in its corporate and domain names. He therefore submitted that any inconvenience caused to Defendant No. 1 by the grant of an injunction would be the direct result of Defendant No. 1's own deliberate and dishonest conduct. This, he submitted, would not and could not outweigh the Plaintiff's statutory and proprietary rights that flowed from being the proprietor of the HAMON Marks.

33. Basis the above, Mr Dwarkadas submitted that the balance of convenience was therefore entirely in favour of the Plaintiff. He also submitted that the question of balance of convenience would arise only when, on merit, the scales were balanced and not when they were tilted in favour of one party. In support of his contention, Mr. Dwarkadas placed reliance upon the

judgement of this Court in ***Poddar Tyres Ltd v. Bedrock Sales Corporation Ltd.***[4] which he pointed out *inter alia* held that as follows:

"*…Reiterating the test laid down in its earlier judgment in Wearwell Cycle Co. (India) Ltd. v. Wearwell Industries, , the High Court pointed out that the question of balance of convenience was relevant only when, at least prima facie, "the two parties were on the same level and their rights were about equal". In my view, neither are there any special circumstances, nor are the parties in a situation of being near-equal, so as to invoke consideration of balance of convenience in the present case*."

34. Mr. Dwarkadas, therefore, submitted that the Interim Application be allowed and Defendant No. 1 be restrained from infringing the Plaintiff's HAMON Marks and from passing off its products and services as those of the Plaintiff's.

Submissions on behalf of Defendant No. 1:

35. Dr. Tulzapurkar, Learned Senior Counsel appearing on behalf of Defendant No. 1, at the outset submitted that the following questions would arise for consideration in the present Interim Application:

I. Whether the Plaintiff is the registered proprietor of the HAMON Marks?

[4] AIR 1993 BOM 237.

If not, whether the Plaintiff can seek any interim relief?

II. Whether in the absence of a valid assignment the Plaintiff could be granted interim reliefs on the basis of infringement or passing off?

III. Whether Defendant No. 1 is protected by the statutory and equitable defences, including prior and continuous user under Section 34; acquiescence under Section 33; and use by consent under Section 30(2) of the Trade Marks Act; and

IV. Whether the balance of convenience is in favour of the Defendants?

36. Dr. Tulzapurkar submitted that the Plaintiff's entire case was premised on the basis of five registrations comprising the word mark "HAMON" and the logo/device mark, which also has "HAMON" as part thereof. He submitted that it was on this basis that the Plaintiff had sought to restrain Defendant No. 1 from using HAMON as part of its trade name, corporate name and trade mark. Dr. Tulzapurkar, however, submitted that the Plaintiff's claim for infringement was fundamentally flawed and unsustainable since the Plaintiff had failed to establish that the Plaintiff is the registered proprietor or lawful owner of the "HAMON" Marks.

37. He then invited my attention to Section 29 of the Trade Marks Act to point out that an action for infringement can be maintained only by the registered proprietor of a trade mark and that Section 2(v) of the Trade Marks Act defines a "registered proprietor" as the person whose name is entered on the Register of Trade Marks as the proprietor of any such mark. He pointed out that, as on date, the Register of Trade Marks records the name of HCI as the registered proprietor of the HAMON Marks and not the Plaintiff.

38. Dr. Tulzapurkar then pointed out that the Plaintiff's application seeking registration as the subsequent proprietor of the HAMON Marks was presently pending and that the records of the Trade Marks Registry disclosed that clarifications had been sought for by the Registrar from HCI, the alleged assignor. He therefore submitted that it was not open for the Plaintiff in these circumstances to claim the status of a registered proprietor of the HAMON Marks, and therefore the Plaintiff was also not entitled to any relief, let alone interlocutory relief.

39. In dealing with the decision in ***Cott Beverage Inc. v. Silvassa Bottling Company***,[5] upon which reliance was placed by the Plaintiff, Dr. Tulzapurkar submitted that the said judgment did not advance the Plaintiff's case since it only held that the pendency of an application for recording an assignment does not create an absolute bar to the institution of a Suit for infringement. He pointed out from the said decision that the same specifically recognises the fact that registration of an assignment is not a mere formality, and the Court must consider that the non-registration of the assignment is an important factor while deciding whether interim relief should or should not be granted. He submitted that, in the present case, far from there being a delay in recording the alleged assignment in favour of the Plaintiff, the material on record itself demonstrated that the Registrar was not satisfied with the validity and efficacy of the alleged assignment, as objections had been raised by the Registrar.

[5] 2003 SCC OnLine Bom 965.

40. In addition to the above, Dr. Tulzapurkar submitted that the Plaintiff had also failed to establish even a *prima facie* chain of title in respect of the HAMON Marks since the documents relied upon by the Plaintiff suffered from serious infirmities. He pointed out that the Transfer Agreement did not specifically refer to the Indian trade marks of HCI and that, admittedly, the Indian business of HCI was not acquired by CMI France. He then submitted that the purported Confirmatory Deed merely referred to an earlier Private Deed dated 1st June 2022, which was the basis on which the Plaintiff had claimed title to the HAMON Marks. He, however, submitted that the Plaintiff had not produced this Private Deed either before the Registrar or before this Court.

41. Dr. Tulzapurkar then submitted that the position was even more problematic for the Plaintiff since what was filed by the Plaintiff before the Registrar was not the Transfer Agreement Deed but only the Confirmatory Deed. He submitted that the Plaintiff's own pleadings proceeded on the basis that the Confirmatory Deed merely confirmed an earlier transaction, and therefore

the Confirmatory Deed could never have, by itself, operated as the document conferring and/or transferring title in respect of the "HAMON" Marks.

42. Dr. Tulzapurkar submitted that the Confirmatory Deed was itself suspect since it was executed only by a Curator, whereas the Transfer Agreement was executed by the three Trustees in bankruptcy acting pursuant to authority granted by the insolvency authorities. He submitted that the Plaintiff had not produced any order, authority or mandate empowering the Curator to assign or confirm the transfer of the Indian trade marks by HCI, and hence the validity of the Confirmatory Deed was itself in serious doubt.

43. Dr. Tulzapurkar then also submitted that both the Transfer Agreement and the Confirmatory Deed were unstamped and consequently inadmissible in evidence. Apart from this, he submitted that the existence of separate consideration paid under the Confirmatory Deed itself indicated that the Indian trade marks were not part of the assets transferred under the Transfer Agreement. He, therefore, submitted that the Plaintiff ought to be directed to

produce the alleged Private Deed dated 1st June 2022, which was the authority under which the Trustees of HCI purportedly acted, and also the relevant documents evidencing the authority of the so-called Curator to execute the Confirmatory Deed. He submitted that in the absence of such disclosure, an adverse inference must be drawn against the Plaintiff.

44. Dr. Tulzapurkar next submitted that the alleged assignment was also ineffective in law by reason of non-compliance with the provisions of Section 42 of the Trade Marks Act. He submitted that the Plaintiff's own case was that the Plaintiff did not acquire the Indian business of the Hamon Group (HCI), and hence the assignment, if any, was only an assignment of trade marks that did not include goodwill. In these facts, he submitted that the provisions of Section 42 of the Trade Marks Act would squarely apply, which he pointed out required the Plaintiff to advertise the assignment within 6 months from the date of the assignment. He therefore submitted that it was incumbent upon the Plaintiff to have sought directions from the Registrar and to have advertised the assignment as mandated by the

provisions of Section 42, which the Plaintiff had not complied with. He thus submitted that it was clear that the assignment of the HAMON Mark in favour of the Plaintiff never took effect in law and that the Plaintiff cannot therefore sustain a claim for infringement, much less an application for interim relief.

45. According to Dr. Tulzapurkar, the Plaintiff's attempt to rely upon the alleged assignment was further undermined by the fact that the application made before the Registrar was itself defective. He pointed out that Rule 75 of the Trade Marks Rules, 2017, requires the parties to provide particulars concerning the nature of the assignment, including whether it is with or without goodwill. He submitted that in the facts of the present case, no such particulars had been properly furnished. He submitted that the Registrar was required, after applying his mind to the validity of the assignment, to consider the assignment and determine whether the title in the marks in question had validly passed. He thus submitted that the Registrar's function was not merely ministerial and, in support of his contention, placed reliance

upon the decision in the case of ***Electronica India Ltd. v. Electronica Hitech Machines Pvt. Ltd.***[6]

46. Dr. Tulzapurkar then pointed out that Defendant No. 1 was incorporated as far back as in the year 1971 and had been carrying on business continuously thereafter. He submitted that the HAMON name was adopted by Defendant No. 1 in the year 1999 following the acquisition of shares in Defendant No. 1 by entities associated with HCI. He submitted that thereafter Defendant No. 1 had carried on substantial business under the HAMON name and had built an independent reputation and goodwill in India. He also submitted that in the year 2007, when the Shriram Group acquired control of Defendant No. 1, HCI had not raised any objection whatsoever to the continued use of the HAMON name and marks. He submitted that the business continued thereafter under the name Hamon Shriram Cottrell Private Limited and subsequently as Hamon Cooling Systems Private Limited.

[6] Commercial Miscellaneous Petition No. 51 of 2022, Order dated 15.04.2024.

47. Dr. Tulzapurkar submitted that the Plaintiff's case of permissive use was entirely an afterthought and that the cease-and-desist notice as well as the Plaint proceeded on the footing that Defendant No. 1's use was wholly unauthorised. He submitted that it was only after Defendant No. 1 disclosed the facts that the Plaintiff had, in rejoinder, introduced a case of permissive use and that such a plea was neither pleaded nor supported by any contemporaneous document. He submitted that no written licence agreement existed by which HCI permitted Defendant No. 1 to use the HAMON Mark and that Section 2(r)(ii)(c) specifically contemplated a written agreement in case of permitted use.

48. Dr. Tulzapurkar submitted that the mere fact that HCI held shares in Defendant No. 1 also did not, *ipso facto,* mean that a licence had been granted by HCI to Defendant No. 1 to use "HAMON". In support of his contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Mrs. Bacha F. Guzdar v. Commissioner of Income***

Tax,[7] to point out that HCI, being a mere shareholder of Defendant No. 1, was a separate and distinct legal entity from Defendant No. 1. He submitted that merely because HCI held shares in Defendant No. 1 did not mean that Defendant No. 1 would have any rights over the assets of HCI, much less the trade marks of HCI, and vice versa.

49. Dr. Tulzapurkar additionally submitted that trade mark law requires the existence of a connection in the course of trade between the proprietor of a mark and the goods or services offered under that mark. He submitted that ordinarily such a connection manifests itself through the proprietor's supervision and control over the nature and quality of the goods or services marketed under the mark in question. In the present case, he pointed out that the Plaintiff had failed to plead, let alone *prima facie* establish, that HCI exercised any such control or supervision over the business activities of Defendant No. 1.

[7] AIR 1955 SC 74.

50. He then placed reliance upon the decisions in ***American Home Products Corporation v. Mac Laboratories Pvt. Ltd.***[8] and ***Gujarat Bottling Co. Ltd. v. Coca Cola Co.***,[9] to point out that use of a trade mark by a person other than the registered proprietor can be treated as use by the proprietor only where there exists a genuine trade connection in which the proprietor exercises effective control over the quality and character of the goods or services in respect of which the mark in question is used. He submitted that a licence devoid of such control is inconsistent with the fundamental principles of trade mark law.

51. Dr. Tulzapurkar also submitted that Defendant No. 1 had a compelling defence under Section 34 of the Trade Marks Act since Defendant No. 1 had been continuously using the HAMON name and mark in India since 1999. Conversely, he pointed out that no use of the HAMON Marks by HCI in India had either been pleaded, much less established. He submitted that the Plaintiff was therefore seeking to appropriate the very reputation built by

[8] (1986) 1 SCC 465.
[9] (1995) 5 SCC 545.

Defendant No. 1 in the HAMON Mark for over a period exceeding two decades. Dr. Tulzapurkar submitted that Defendant No. 1 was also protected under the provisions of Section 30(2)(b) of the Act, since the use of the HAMON Mark by Defendant No. 1 was entirely with the knowledge of and with the consent of HCI. He therefore submitted that such use cannot amount to infringement.

52. He also submitted that the conduct of the Plaintiff and its predecessors clearly attracts the doctrine of acquiescence. He pointed out that Defendant No. 1 had been continuously and openly using the HAMON name and mark since 1999, with HCI's knowledge, and that HCI had never objected to such use. He also pointed out that even after the Plaintiff claimed to have acquired rights in the HAMON Marks in the year 2022, the Plaintiff took no action until April 2024. He submitted that such prolonged inaction itself disentitled the Plaintiff from being granted any equitable relief. In support of his contention, he placed reliance upon the decisions in ***Willmott v. Barber***,[10]

[10] 15 (1880) Chancery Division 96.

Power Control Appliances v. Sumeet Machines Pvt. Ltd.,[11] and ***Northern & Shell PLC v. Conde Nast & National Magazines Distributors Limited & Anr***.[12]

53. Dr. Tulzapurkar submitted that the Plaintiff's claim for passing off was equally unsustainable. He submitted that neither the Plaintiff nor HCI had established any business operations or goodwill in India under the HAMON Mark. He submitted that a claim for passing off is necessarily founded on reputation, goodwill, misrepresentation and damage, which the Plaintiff had failed to establish. On the other hand, he pointed out that Defendant No. 1 had demonstrated extensive business activity and a substantial turnover in India under the HAMON name for over several decades. He submitted that if the injunction as prayed for were granted, Defendant No. 1 would suffer grave and irreparable loss, harm and injury, whereas no loss, harm or injury would be caused to the Plaintiff if the injunction were refused. He therefore

[11] 1994 2 SCC 448
[12] 1995 RPC 117.

submitted that the balance of convenience lay squarely in favour of Defendant No. 1.

54. Dr. Tulzapurkar, then with regard to the instances of confusion alleged by the Plaintiff, submitted that two such stray communications cannot constitute evidence of actual deception or establish the extensive confusion necessary to sustain a passing off action. He submitted that at the highest, such emails, even assuming they were genuine, merely demonstrate routine commercial enquiries.

55. Dr. Tulzapurkar thus submitted that the balance of convenience was overwhelmingly in favour of Defendant No. 1. He submitted that Defendant No. 1 was presently executing projects valued in excess of Rs. 450 crores for various public sector undertakings and major industrial customers, and an injunction at this stage would jeopardise ongoing projects, expose Defendant No. 1 to substantial contractual liabilities, disrupt public infrastructure projects and seriously prejudice hundreds of employees. Conversely, he

reiterated that the Plaintiff did not have any operating business in India, and therefore the Plaintiff would suffer no prejudice if the injunction as prayed for were not granted. He submitted that any alleged injury to the Plaintiff was entirely speculative and compensable in damages, assuming the Plaintiff were to succeed, whereas the injury to Defendant No. 1 would be immediate, severe and irreparable. He also reiterated that delay, acquiescence and serious defects in title vitiated the Plaintiff's claim. In these circumstances, he submitted that the Plaintiff had failed to establish any *prima facie* case in support of the grant of interim relief, and, therefore, the Interim Application ought to be dismissed with costs.

Submissions in Rejoinder on behalf of the Plaintiff:

56. Mr. Dwarkadas submitted that the present case was not one involving a challenge to title or competing claims of original proprietorship but was considerably narrower and pertained to a derivative user, i.e., Defendant No.

1, who had admittedly adopted and used the HAMON Mark with the consent and authority of HCI, the registered proprietor, and who now seeks to resist enforcement by the successor in interest even after the original consent had ceased. He therefore submitted that the central question for consideration was whether a user whose adoption of a mark is traceable to the proprietor's consent can subsequently assert an independent proprietary right in the mark that is against the right, title and interest of the successive proprietor.

57. Mr. Dwarkadas then invited my attention to the averment made in the Affidavit in Reply and Affidavit in Sur-Rejoinder filed by Defendant No. 1 to point out that Defendant No. 1 had expressly admitted that the adoption and use of the HAMON Mark by Defendant No. 1 from 1999 onwards was with the "implied or express consent" of HCI. He submitted that Defendant No. 1, having specifically conceded to this position, could not thereafter seek to simultaneously invoke the defence of the prior user under Section 34 of the Trade Marks Act and the defence available to a permitted user under Section 30(2)(c).

58. He placed reliance upon the decision of Calcutta High Court in the case of ***Patton International Ltd. v. Patton Electronics (I) Pvt. Ltd.***[13] to point out that a licence does not create any title in the licensee. He submitted that in the present case, Defendant No. 1, being a permissive user/licensee, cannot claim title as per Section 34. In support of this contention, he placed reliance upon the decision of this Court in the case of ***Velcro Industries B.V. and Anr. v. Velcro India Ltd.***[14] and also upon the extract from Professor Christopher Wadlow's book titled '***The Law of Passing Off - Unfair Competition By Misrepresentation***' to point out that the goodwill in the business carried on by the licensee under the licenced name/mark will accrue to the owner/licensor and no such goodwill or interest can be claimed to have been acquired by the licensee independently.

59. Mr. Dwarkadas therefore submitted that the two stands taken by Defendant No. 1, i.e., on the one hand claiming independent prior use of the HAMON Mark since 1999 and on the other claiming that Defendant No. 1 has used

[13] 2009 (40) PTC 633 (Cal).
[14] 1992 SCC Online Bom 582.

the HAMON Mark with the consent or authority of HCI, were fundamentally inconsistent and mutually destructive. He submitted that a party who traces its adoption and use of a mark to the authority of a proprietor of a mark necessarily acknowledges and accepts the superior right, title and interest of the proprietor and therefore cannot, at the same time, assert any independent proprietary rights adverse to and/or in derogation of the right, title and interest of the proprietor or the proprietor's successor-in-title. In support of his contention, he placed reliance upon the decision of Hon'ble Supreme Court in the case of ***Steel Authority of India Ltd. v. Union of India.***[15]

60. He further submitted that the defence of prior use under Section 34 presupposes an independent adoption and use of the mark, whereas a defence founded on permissive user proceeds on the basis of an acknowledgement that the use of the mark in question originates from the authority of the proprietor of such mark. He therefore submitted that once

[15] (2006) 12 SCC 233.

Defendant No. 1 had admitted that its use of HAMON commenced pursuant to the consent of HCI, Defendant No. 1 was estopped from asserting that such use simultaneously constituted independent proprietary use. In support of this contention, Mr. Dwarkadas placed reliance upon the decisions of ***Abdul Rasul Nurallah Virjee and Jalalluddin Nurallah Virjee v. Regal Footwear,***[16] ***Nextech Sensors & Controls v. Omicron Sensing Pvt. Ltd.,***[17] ***Kores (India) Ltd. v. Whale Stationary Products Ltd.***[18] and ***Louis Vuitton Malletier v. Mrs. Sharmila Lalit Vyas & Anr.***[19]

61. Mr. Dwarkadas, then in dealing with the contentions advanced in respect of the Transfer Agreement and Confirmatory Deed, reiterated that the expression "all IP Rights" in the Transfer Agreement was comprehensive and admits no exclusion. He submitted that the absence of a specific mention of Indian registrations by number in the Transfer Agreement did not mean that the Indian trade marks were in any manner excluded from its ambit and

[16] Order dated 02.01.2023 in Notice of Motion No. 516 of 2017 at Bombay High Court.
[17] Order dated 25.07.2025 in IA(L)/6056/2025 at Bombay High Court.
[18] Reported in 2008(3) Mh. L. J. 523.
[19] Order dated. 24.02.2023 in IA(L)/1684/2022 at Bombay High Court.

scope since Clause 1.1.1.1 of the Transfer Agreement specifically provided that "*The entire portfolio of brands held by HCI*".

62. He then, in dealing with the submissions made regarding the Confirmatory Deed, reiterated that the Plaintiff had already been recorded as the subsequent proprietor of "Trade Mark No. 1836422" 

and that the Registrar had therefore acted on the basis of the Confirmatory Deed without insisting on any additional documents. He submitted that this fact alone evidenced the validity of the Plaintiff's title to the HAMON Marks.

63. He submitted that Defendant No. 1 had sought to cast unwarranted doubt on the Confirmatory Deed by relying on the reference to the "Private Deed dated 1st June 2022" contained therein and contending that the same had not been produced. He submitted that the reference in the Confirmatory Deed to a Private Deed dated 1st June 2022 was only to the Transfer Agreement dated 25th July 2022, which, by Clause 6, was deemed effective from 1st June 2022,

and that no separate Private Deed existed. He submitted that the expression "Private Deed" was used merely to indicate that the Transfer Agreement was not a public document and to signify its effective date.

64. He also pointed out that the Confirmatory Deed had been duly stamped in India and that, out of the total IP rights consideration of €1,100,001, an amount of €9,998 was allocated towards the Indian trade marks solely for stamp duty purposes. He submitted that the stamp duty so paid had been accepted by the competent authorities. He also then pointed out that the Transfer Agreement was executed by all three Belgian Court-appointed Trustees/Curators of HCI, including Mr. Xavier Ibarrondo, who had executed the Confirmatory Deed as sole Curator on behalf of all three Trustees. He therefore submitted that Defendant No. 1's attempt to manufacture an inconsistency in the Plaintiff's chain of title by doubting the Confirmatory Deed was wholly misconceived and liable to be rejected.

65. Mr. Dwarkadas then pointed out from the tender documents and the material reproduced on Defendant No. 1's website (Exhibit N) that Defendant No. 1

had also misrepresented the commercial lineage and technical credentials of the Plaintiff and HCI in ongoing tenders. He pointed out that Defendant No. 1 had been projecting the credentials and experience of HCI and the Hamon Group as those of Defendant No. 1. He submitted that such technical credentials and commercial lineage formed an integral part of the goodwill and reputation associated with the HAMON Marks, which now stood vested in the Plaintiff.

66. Mr. Dwarkadas then submitted that the present case goes far beyond a mere similarity of marks. He submitted that Defendant No. 1 was actively and affirmatively representing a continuity of source, identity and corporate lineage that no longer existed. Such conduct, he submitted, was plainly to deceive and mislead customers and members of the trade into believing that Defendant No. 1 continued to be associated with, or form part of, the HAMON group. He submitted that such conduct would cause continued and irreversible injury to the Plaintiff's reputation and goodwill.

67. Mr. Dwarkadas reiterated that any inconvenience now claimed by the Defendant No. 1 was entirely self-created. He submitted that Defendant No. 1 was well aware, at least since September 2022, that all the intellectual property rights in the HAMON Marks had been separated from Defendant No. 1 and vested in the Plaintiff. Despite this, he submitted that Defendant No. 1 had consciously chosen to continue using the marks and to hold itself out as connected with the HAMON group. He therefore submitted that it was not open to Defendant No. 1 to invoke considerations of hardship or balance of convenience arising from circumstances brought about by its own wilful and deliberate conduct.

68. Finally, he submitted that a Court exercising equitable jurisdiction ought not to aid and protect a party who has wilfully and knowingly acted in a manner which was violative of the Plaintiff's proprietary and statutory rights. He thus submitted that the balance of convenience was overwhelmingly in favour of the Plaintiff and in protecting the statutory and proprietary rights

of the registered proprietor rather than permitting the continued unauthorised use of the HAMON Marks by Defendant No. 1.

69. Mr. Dwarkadas submitted that even the plea of acquiescence was misconceived and unsustainable. He submitted that the use of the HAMON Mark and trade name by Defendant No. 1 from the year 1999 was under a common law licence/permitted use by the Plaintiff's predecessor and, therefore, such use inured to the benefit of the Plaintiff's predecessor and, consequently, the Plaintiff. He submitted that the defence of acquiescence had no applicability in the facts of the present case and also that it was well settled that to establish acquiescence, Defendant No. 1 must show a positive act on the part of the Plaintiff that encouraged or induced Defendant No. 1 to use the impugned marks, which he submitted that Defendant No. 1 had failed to do. In support of this contention, he placed reliance on the judgement of the Hon'ble Supreme Court in ***Power Control Appliances v. Sumeet Machines***.[20]

[20] 1994 2 SCC 448.

Reasons and Conclusions:

70. After considering the rival contentions, the case law upon which reliance has been placed, and the material before me, I find that the Plaintiff has made out a *prima facie* case for the grant of interim relief.

A. It is well settled that, when deciding an interlocutory application, the Court is not required to conduct a mini trial or finally decide disputed questions of either fact or law. The enquiry at this stage is confined to a *prima facie* assessment based on the material before the Court. It is on the basis of this material as a whole, that the Court is required to arrive at a determination after taking into consideration the well-established principles to be considered, i.e., *prima facie* case, balance of convenience and irreparable loss, harm and injury. As held in a catena of cases, the Court at the interim stage is not required to and, in fact, cannot decide questions which require a detailed examination of the parties' respective rights, appreciation of evidence, or final determination of disputed questions. These are all matters for trial that cannot be conclusively determined at the interlocutory stage. In

the facts of the present case, in my view, not only has the Plaintiff made out a strong *prima facie* case for the grant of interim relief, but I must also note that Defendant No. 1 would not be entitled to any equitable relief, both on account of its conduct and the stand taken by it in the pleadings, as I shall deal with subsequently.

B. In my view, there can be little doubt that the Plaintiff has made out a *prima facie* case that the Plaintiff is the registered proprietor of the HAMON Marks. This, in my view, is plainly evident from (i) the Deed of Assignment dated 15th September 1999 by which ENGETRA assigned the HAMON Mark to HCI, which is not disputed; (ii) the Transfer Agreement which leaves no manner of doubt that all the HAMON Marks stood transferred to and vested in the Plaintiff as is plainly evident from Clause 1.1.1.1 of the Transfer Agreement, which records that the entire portfolio of brands held by HCI, including all brand names and trade names attached to the Hamon brands, stood transferred to the Plaintiff. Clause 3 exhaustively enumerates the assets excluded from the transfer from which the Indian HAMON Marks

are absent; (iii) the orders sanctioning the sale/transfer of HCI's assets to CMI France, which is undisputedly part of the John Cockerill Group of Companies; (iv) the Confirmatory Deed dated 18th April 2024 by which the transfer was confirmed; and (v) most crucially, the fact that the name of the Plaintiff has been entered in the Register of Trade Marks as the proprietor in respect of Trade Mark No. 1836422.

C. Furthermore, and importantly, the fact that Defendant No. 1 had no independent right to use the HAMON name and marks is supported by the fact that the Plaintiff paid an additional sum of €500,000 to the Trustees of HCI specifically to enable the former Hamon group companies, which were not acquired by the Plaintiff, to complete their ongoing projects under the HAMON name. This is plainly evident from a reading of Clauses 1.1.1.2 and 6 of the Transfer Agreement as well as from the SSA, which was confined solely to the sale of shares held by Hamon (Netherlands) B.V. in Defendant No. 1. In my *prima facie* view, these facts lend considerable support to the Plaintiff's case that the worldwide rights in the HAMON

portfolio of trade marks, including the Indian registrations, stood transferred to the Plaintiff and the very fact that separate consideration was paid to secure only a limited "Brand Usage Right" for the purpose of completing ongoing projects makes implicit the fact that the former Hamon group companies, including Defendant No. 1, did not possess any independent or proprietary right in the HAMON Marks. Thus, the reliance placed by Defendant No. 1 upon ***Mrs. Bacha F. Guzdar*** is of no assistance to the present facts of the case.

D. Also, the mere fact that the name of HCI continues to appear on the Register in respect of the remaining HAMON Marks would not, in my view, in the facts of the present case, in any manner, disentitle the Plaintiff from suing for infringement and passing off or negate the existence of a valid assignment in favour of the Plaintiff. It is now well settled that an assignment of a trade mark is complete and effective *inter partes* upon execution of the instrument of assignment and does not require recordal on the Register as a condition precedent to its validity or enforceability. In this

context, the Plaintiff's reliance upon the decision of this Court in ***Skol Breweries Ltd.,*** and ***J.K. Jain & Ors***, which hold that non-recordal of an assignment or delay in recording the assignee's name on the Register would not disentitle an assignee from instituting or maintaining an infringement action, in my view, squarely apply to the facts of the present case. In these circumstances, Defendant No. 1's reliance on the decision of ***Electronica India Ltd.*** is also of no assistance.

E. The decision in ***Cott Beverage*** would not assist the Defendants since the facts of that case were entirely distinguishable. Furthermore, that decision does not hold that an assignee is precluded from maintaining infringement proceedings pending the recordal of the assignment before the Registrar. Thus, for the reasons set out in (**B**) and (**D**), I am unable to therefore accept that the Plaintiff cannot be treated as the registered proprietor of the HAMON Marks or that the Plaintiff would be disentitled from maintaining a claim for infringement and/or passing off.

F. Also, the contention that the Plaintiff would be disentitled to interim relief on the ground that the Plaintiff has not produced the "Private Deed" is, in my view, wholly untenable for two reasons. *Firstly*, the name of the Plaintiff has already, on the basis of the Confirmatory Deed, been entered in the Register of Trade Marks in respect of "Trade Mark No. 1836422". *Secondly*, I am *prima facie* satisfied that the "Private Deed" referred to in the Confirmatory Deed is nothing but the Transfer Agreement. I say so because, immediately after inspection, the Plaintiff clarified in writing that the reference in the Confirmatory Deed to the "Private Deed dated 1st June 2022" was in fact a reference to the Transfer Agreement dated 25th July 2022, which, by Clause 6 thereof, became effective from 1st June 2022, and further furnished inspection of all the relevant documents. There is, therefore, *prima facie*, no material to suggest that any separate Private Deed exists.

G. Additionally, and in my view crucially, Defendant No. 1 is admittedly not the assignor of the HAMON Marks, nor does Defendant No. 1 claim any

title to the registered HAMON Marks by virtue of any assignment, transmission or other conveyance executed by HCI in its favour. The defence of Defendant No. 1 is founded principally on the alleged long-standing use of the mark, its association with the Hamon group, and the rights asserted as a prior or independent user. Also, as already noted, it is not in dispute that HCI, i.e., the assignor of the HAMON Marks to the Plaintiff, has not challenged either the Transfer Agreement or the Confirmatory Deed. In this context, the Plaintiff's reliance upon the decision in the case of ***Parksons Cartamundi (P) Ltd.*** in support of the contention that a third party who is neither the assignor nor a competing assignee cannot impeach the validity of the assignment is entirely apposite.

H. Conversely, the material upon which reliance has been placed by the Plaintiff in particular, the email dated 16th June 2025 of Mr. Bernard Vanham, one of the Trustees of HCI, unequivocally confirms that the Plaintiff is the sole legal owner of the HAMON brand and the worldwide intellectual property rights in the HAMON Marks. I *prima facie* find that

this therefore supports the Plaintiff's case of a valid assignment in respect of all the intellectual property rights in the HAMON Marks in favour of the Plaintiff by HCI. Hence, in my view, in the present case, the assignor itself, acting through its duly appointed Trustees, has expressly confirmed that the Plaintiff is the sole legal owner of the HAMON brand and the worldwide intellectual property rights in the HAMON Marks. Also, and in my view crucially, there is no competing claim or denial of the Plaintiff's title to the HAMON marks.

I. I am also unable to uphold the objections raised by Defendant No. 1 regarding the stamping and the alleged non-compliance with the provisions of Section 42 of the Trade Marks Act. Clause 1.1 of the Transfer Agreement, as already noted, clearly provides for the transfer of "*all IP Rights*" without any restriction or severance of goodwill. Also, an assignment without goodwill must be express and specific. In the present case, there is no such exclusion in the Transfer Agreement. The Confirmatory Deed also specifically confirms the transfer of "*ownership of the trade marks as well as*

the related goodwill". Therefore, in the absence of express severance of the goodwill, the assignment of the HAMON Marks clearly includes the attendant goodwill.

J. It is also crucial to note that Defendant No. 1 has, in justification of its use of the impugned marks, taken a contrary and, in my view, self-defeating stand. Defendant No. 1 has, on the one hand, invoked the provisions of Section 34 of the Trade Marks Act, claiming to be an independent prior user of the HAMON mark since 1999. On the other hand, Defendant No. 1 has asserted that the use of HAMON was "*with the implied or express consent*" of HCI, as pleaded by Defendant No. 1, in the Reply Affidavit[21] and Affidavit in Sur-Rejoinder.[22] Thus, it is the pleaded case of Defendant No. 1 that its use of the HAMON Mark was with the consent of HCI.

K. Therefore, the defence under Section 34 would not apply, since the protection afforded thereunder applies only to a party that has independently adopted and used the mark in question and not to a permitted user. Hence the

[21] Paragraph 14(i) at page 30 and paragraph 14(iv) at page 32.
[22] Paragraph 31 at page 461, paragraph 41 at page 468 and paragraph 49 at page 478.

Plaintiff's reliance upon the decisions in case of ***Abdul Rasul Nurallah Virjee and Jalalluddin Nurallah Virjee v. Regal Footwear***, ***Nextech Sensors & Controls v. Omicron Sensing Pvt. Ltd.***, ***Kores (India) Ltd. v. Whale Stationary Products Ltd***, ***Steel Authority of India Ltd. v. Union of India*** and ***Louis Vuitton Malletier v. Mrs. Sharmila Lalit Vyas & Anr.***, would squarely apply.

L. Furthermore, the Defendant No. 1's conduct also undermines the claim of independent use since Defendant No. 1 has admittedly, in August 2022 and in January 2024, filed trade mark applications for "HAMON COOLING" and "HCS HAMON COOLING" on a "proposed to be used" basis. A party asserting continuous independent use of a mark since 1999 does not, a quarter century later, solemnly declare before a statutory authority that the mark is "proposed to be used". In my view, this alone establishes the patently dishonest conduct on the part of Defendant No. 1 in attempting to usurp a mark over which Defendant No. 1 was fully aware it had absolutely no independent legal right.

M. In my view, the explanation of Defendant No. 1 that the applications filed for “HAMON COOLING” and “HCS HAMON COOLING” relate only to composite or device marks and not to the “core” HAMON Mark does not diminish the significance of the applications themselves. Equally significant is the Examination Report dated 31st January 2023, issued by the Registrar, which cited the Plaintiff’s HAMON registration as a conflicting mark. In response, by its Reply dated 6th February 2023, Defendant No. 1 sought to distinguish the mark “HAMON COOLING” from "HAMON" but significantly did not assert any prior proprietary right in, or independent ownership of, the HAMON Marks. The contemporaneous conduct of Defendant No. 1, viewed as a whole, is difficult to reconcile. On the one hand, Defendant No. 1 traces its permissive use of the HAMON Marks to HCI and relies upon its long-standing association with the Hamon group. On the other hand, Defendant No. 1 has filed trade mark applications on a proposed-to-be-used basis and had, before the Trade Marks Registry attempted to distinguish its marks, i.e., “HAMON COOLING” and “HCS

HAMON COOLING", from the HAMON Marks rather than asserting any independent proprietary rights in the impugned marks. Such conduct itself speaks volumes, not only of the lack of any bona fides on the part of Defendant No. 1 but also of any right that Defendant No. 1 has in the impugned marks, much less any long-standing, independent proprietary rights claimed in the HAMON Marks.

N. I also find much merit in the Plaintiff's claim for passing off and the Plaintiff's reliance upon the decisions in ***Patton International*** and ***Velcro Industries B.V.*** The HAMON Marks have been in use in India since 1988 at the very latest, and the user claim for the word mark dates to 1963. Therefore, the goodwill and reputation associated with these marks now vest in the Plaintiff by virtue of the Transfer Agreement. By their own admission, the Defendant No. 1's use of the marks was derivative, so it is not open for Defendant No. 1 to claim that any goodwill built up by use of the HAMON Mark is an independent proprietary asset of Defendant No. 1. It is well settled that the benefit of goodwill in a trade mark which is used by consent

of the proprietor would inure for the benefit of the proprietor and not for the benefit of the user. Having due regard to the statutory recognition accorded to the concepts of permitted use and registered user under Sections 48 and 49 of the Trade Marks Act, the same principle would equally apply, even in cases of unregistered or informal permitted use where the user traces its right to use the mark back to the consent of the proprietor. Accordingly, the reliance placed by Defendant No. 1 upon the decisions in ***American Home Products*** and ***Gujarat Bottling*** is misplaced, since the present case does not concern the validity of a registered user arrangement or the extent of quality control exercised by the proprietor.

O. The Plaintiff has also placed on record material which sets out actual instances of confusion arising from the Defendant No. 1's use of the impugned marks. Although Defendant No. 1 has sought to characterise the emails on which the Plaintiff relied as "stray" or "isolated" instances, the fact remains that confusion exists. The Plaintiff has, *prima facie*, sufficiently established that the continued use by Defendant No. 1 of the impugned

HAMON Marks has resulted in actual confusion amongst persons in the trade as to the source, affiliation and authority under which Defendant No. 1 is operating, thereby giving rise to a real likelihood of injury to the goodwill and reputation now vested in the Plaintiff. Hence, in my view, the Plaintiff has made out a *prima facie* case of passing off.

P. I also find no merit in the contention of Defendant No. 1 that the Plaintiff is disentitled to relief on the grounds of acquiescence and delay. *Prima facie*, the Plaintiff's submission that there can be no acquiescence in respect of the acts of its licensee or permitted user merits acceptance. Further, as held by the Hon'ble Supreme Court in ***Power Control Appliances v. Sumeet Machines Pvt. Ltd.***, acquiescence requires a positive act or conduct on the part of the proprietor which induces or encourages the party taking the defence of acquiescence to independently use the infringing mark. In the present case, Defendant No. 1 has not pointed to any such positive act or conduct by HCI or the Plaintiff. On the contrary, the material on record indicates that upon discovering Defendant No. 1's continued use of the

HAMON Mark, the Plaintiff promptly issued a cease and desist notice in April 2024. Significantly, Defendant No. 1 did not even respond to the said notice. The period between the execution of the Transfer Agreement in June/July 2022 and the institution of the present Suit in 2025 is, in any event, well within the five-year period contemplated under Section 33 of the Trade Marks Act. More importantly, the question of acquiescence does not arise because the Defendant's prior use was admittedly permissive in nature. In the present facts, I find that decisions in ***Willmott v. Barber*** and ***Northern & Shell plc v. Condé Nast & Anr.*** upon which reliance was placed by Defendant No. 1, would not apply since the facts in those cases were materially different.

Q. In the present case, the Plaintiff is the registered proprietor of marks the registration of which dates back to 1963. The Defendants are, on their own admitted case, derivative users whose authority to use the marks has expired. The balance clearly favours the Plaintiff, and even considering if the injunction is refused, the Plaintiff, in fact, will continue to suffer its marks

being exploited by a former permitted user who is actively projecting continuity of corporate identity and lineage to which it has no entitlement whatsoever. The balance of convenience, therefore, overwhelmingly favours the Plaintiff. Hence, the Plaintiffs reliance upon the decisions in ***Poddar Tyres Ltd. v. Bedrock Sales Corporation Ltd.***, and ***Wearwell Cycle Co. (India) Ltd. v. Wearwell Industries***, in the facts of the present case, is entirely apposite.

R. In my unhesitating view, even assuming any inconvenience is caused to Defendant No. 1, such inconvenience would be a result of Defendant No. 1's own creation. Defendant No. 1 has chosen to use a mark and bid for projects after the expiry of the limited brand usage rights, despite the fact that Defendant No. 1 had absolutely no right, title or interest in the HAMON Mark after the expiry of the limited "Brand Usage Right". Defendant No. 1 has also, despite having received the cease and desist notice, continued to use the HAMON Mark and has continued to do so even after the application filed by Defendant No. 1 for the mark "HAMON COOLING" was rejected

and subsequently proceeded to file fresh applications for "HAMON COOLING" and "HCS HAMON COOLING" on a proposed-to-be-used basis. Having done so, Defendant No. 1 cannot now contend that the projects it is executing would be affected. I must note that some of the projects that Defendant No. 1 is executing are public projects. Hence in my view, it is imperative to grant an injunction so that Defendant No. 1 does not continue to misrepresent itself and secure public projects on the basis of a reputation and goodwill which it plainly lacks. In my view, therefore, it would in fact be in the larger public interest to shield the public and public authorities from Defendant No. 1's misuse of the HAMON Mark.

71. Hence, for the aforesaid reasons, I pass the following Order:

i. The captioned Interim Application is allowed in terms of prayer clauses (**a**) and (**b**).

ii. There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]

After pronouncement:

72. Learned counsel for the Defendant sought a stay of the Order for a period of four weeks. This was opposed by Mr. Kamod. However, Mr. Kamod submitted that the Order shall not be acted upon by the Applicant for a period of three weeks from today. His statement is accepted.

[ARIF S. DOCTOR, J.]