



[Emblem of the Italian Republic]

THE COURT OF MILAN Section specializing in Corporate Law

Section A

The Collegiate Court of Milan, composed of the following judges:

Claudio Marangoni President and Reporting Judge

Silvia Giani judge

Pierluigi Perrotti judge

have issued the following

Ordinance

In the claim pursuant to article 669-terdecies of the Code of Civil Procedure proposed by SAMIA COMBUSTION Srl., sole proprietorship, filed against SAMIA ITALIA Srl. filed on 16/01/2014.

1. The ordinance, object of the claim, dismissed the precautionary appeal proposed by the complainant SAMIA COMBUSTION Srl, sole proprietorship, that sought a preliminary injunction against SAMIA ITALIA Srl in relation to the use of

the SAMIA trademark for the production and marketing of burners as well as for the use of the relative know how, and the further performance of competitively illegal acts that gave rise to confusion with the activities and products of the complainant and for spreading false and disparaging business information.

In brief, the complainant, reproducing its arguments already presented to the first judge, founded its claims on its exclusive right to exploit the SAMIA trademark concerning burners and on the know how relative to certain models of burners resulting from the lease contract with SAMIA Srl, in liquidation, dated 19/12/2006, relative to the sale of the burner division of the said company which resulted with the cessation exercised by SAMIA COMBUSTION Srl, sole proprietorship, on 22/06/2010 through the irrevocable purchase clause option as provided in its favour by the contract. The Court of Bergamo and the Court of Appeals of Brescia have both upheld their sentences over the proper exercise by the complainant of such option, even if the counterparties involved have appealed to the Court of Cassation but whose decision is still pending.

Referring to the illicit practices, object of the first precautionary appeal, the complainant, and requesting that the first judge's decision be revoked and instead grant the precautionary petitions proposed.

The respondent, SAMIA ITALIA Srl, aside from pleading the non-definitiveness of the aforementioned sentence and the complainant's attitude towards the immediate enforceability of the rulings contained therein, noted that in any case the complainant had not paid the amount for the alleged sale and, therefore, no rights regarding the divestiture of the business unit in question could be recognised.

Furthermore, the sales deed of the SAMIA trademark between the effective owner, Antonio Ventola, and SAMIA Italia Srl, stipulated on 13/3/2013 in order to establish their contested trademark rights was appealed.

These elements - according to SAMIA ITALIA Srl - excluded all rights that the complainant had on the SAMIA trademark and on the know how related to it.

2. The collegiate court considers that the complaint must be upheld.

In the first place, it must be noted that as a precautionary measure, the judge must evaluate the legitimacy of the *fumus boni iuris* of right claimed by the complainant. This assessment must be made based on the state of the proceedings according to the elements available that make the prospect of the controversy more or less reliable, in terms proposed by it.

In this perspective, the Collegiate Court believes that in accordance with the conclusions reached earlier by the Court of Bergamo and then by the Court of Appeals of Brescia in favour of the complainant as to the ownership of the burner division which was subject to lease as signed on 19/12/2006 between Samia Srl, in liquidation, due to the exercise of its purchase option, as contained in the same document, by SAMIA COMBUSTION Srl, sole proprietorship, is relevant enough evidence to consider the validity of the rights alleged and contained in the contract, or rather, the exclusive use of the SAMIA trademark for burners and other product lines mentioned therein.

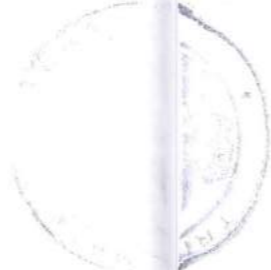
Therefore, the question of enforceability decided by the Court of Bergamo or the actual payment for the sale noted by the Court of Appeals of Brescia with acceptable motivation are not in any way relevant for this court since at the time, the sale contract was finalized and accepted by Samia Srl, which was in liquidation, and the willingness of SAMIA COMBUSTION Srl, single proprietorship, to exercise the purchase option clause as contained in the contract and the willingness of Samia Srl to accept the proposal enclosed in the communication sent on 22/06/2010, which contained all the essential elements of the sale contract (refer to the sentence issued by the Brescia Court of Appeals, sentence No. 713/13, page 20 of document 18 complainant file).

The shared evaluation contained in the sentence as well as in the double evaluation contained therein has convinced this court to uphold the *fumus boni iuris* of the rights claimed by the complainant, SAMIA COMBUSTION Srl, sole proprietorship, in relation to the sale of the burner division.

3. As regards to the contract of sale for the SAMIA trademark as signed by Antonio Ventola, original depositary of the said trademark, in favour of the defendant SAMIA ITALIA Srl, this court retains that this fact is completely irrelevant for the case.

The examination of the documents reveals that:

- Antonio Ventola is actually the trademark holder of SAMIA as referred to in application MI2006001107 dated 09/11/2006, which is attached to the lease dated 19/12/2006 between the complainant and SAMIA Srl (refer to attachment E of document 3 of the complainant file)
- In this contract, A. Ventola intervened as the sole administrator of Samia Srl;
- On 28/07/2009, Samia Srl, in liquidation, ceded the entire company to Weissenalpen Holding SA, including all divisions (Chinese market; torches division) as well as the burner division which was on lease to SAMIA COMBUSTION Srl, sole proprietorship, with the stipulation that the sale of the burner division would have taken effect at the expiry of the



lease (as interpreted by article 4 of the Contract as well as by both the Court of Bergamo and the Court of Appeals of Brescia in coordination with article 12 of the company lease contract);

- In this contract, A. Ventola intervened as the sole administrator of Samia Srl;

- In this same contract of sale, the SAMIA trademark, referred to in application No. MI2006001107 6 dated 09/11/2006 and owned by Antonio Ventola, was expressly included (refer to attachment B to the contract, in document 9 of the complainant file).

From the foregoing, the Court believes that there are elements that entirely coincide and converge demonstrating the successful sale of the trademark in question between the original registrant Antonio Ventola and SAMIA Srl - even though they are not transcribed- by reason of full and absolute power of disposal carried out by the company itself, first by stipulating the business lease contract with SAMIA COMBUSTION Srl, sole proprietorship, that contained the irrevocable purchase option - which was effectively exercised - even though they are not transcribed; the full and absolute disposition to sell as exercised by the firm itself, first through the stipulation of the lease with SAMIA COMBUSTION Ltd. sole proprietorship, which contained the irrevocable option to purchase clause, that implicated the permanent

transfer of the trademark to the buyer; then the sale of the entire company to Weissenalpen Holding SA, which, for the portion relating to the burner division, has not been finalised because of the purchase option clause exercised by the complainant.

A very important circumstance is that in the transfer of the intangible asset to Samia Srl, A. Ventola intervened in both negotiations as the administrator of Samia Srl, and was, therefore, quite aware of the documents that the company had put in place for the registration of the trademark thus demonstrating total agreement and accord with the conduct of the company of which he was administrator and almost totalitarian shareholder (the other shareholder had a minimum percentage of share capital: refer to document 1 of the complainant file).

Therefore, this proves that the company had full access to the registered trademark thus enabling the transfer of the trademark to his name, free transaction the conclusion of which can be proved by any means.

On the other hand, it may likewise be noted - again confirming that Samia Srl, in liquidation, had full access of the registered trademark - during the proceedings held before the Court of Bergamo and then before the Court of Appeals of Brescia the issue of the alleged ineffectiveness or invalidity of the trademark in relation to the exercise of the option to

purchase clause of the company's burner division was never raised.

Therefore, from the foregoing, it must be inferred that SAMIA ITALIA Srl stipulated a contract for the transfer of the trademark on 13/03/2013 from a subject devoid of ownership of the trademark, so it was a *non domino* sale and totally ineffective in conferring any right of the trademark to third parties.

The complainant, SAMIA COMBUSTION Srl, sole proprietorship, has all rights on the SAMIA trademark as well as to the sale of the burner division, therefore exclusive use of it for the burner division (except for the Chinese market).

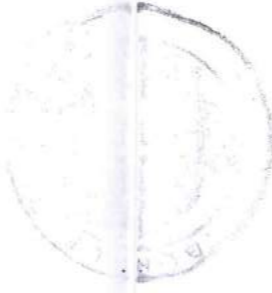
4. On the basis of the limitation of the use of the SAMIA trademark as described above, there is no doubt that SAMIA ITALIA Srl has interfered with the rights of SAMIA COMBUSTION Srl, sole proprietorship, on the aforementioned trademark in relation to the sale and marketing of burners and spare parts in the world market (except for the Chinese market) based on the allegations of article 20, point A of the Code of Industrial Property Rights. Such behaviour is supplemented by the commercialization of burner parts inferred by the complainant (sale of spare parts to Indemi Ltd, documents 20 and 21 of the complainant file) and the diffusion of documents that offer customers these products (documents 24 and 25 of the complainant file).

5. In relation to the breach of know how reported by SAMIA COMBUSTION Srl, sole proprietorship, the Collegiate Court noted that it does not consider the substance and effective protectability of this (vague) technical information substantial.

As is known, the legal protection of technology must be verified and is granted only in cases where it is a secret, (not generally known or easily accessible), substantial (which means that it is significant and useful for the production of products covered by a contract), and identified (described in a sufficiently comprehensive manner that allows verification and it fulfils the criteria of secrecy and substantiality).

The mere reading of the Annex to the lease contract listing burner product lines included in the company division in question does not allow this Collegiate Court to verify the foundation of effective legal protection of the know how derived nor of other similar elements obtainable from other records and documents of this case.

6. On the other hand, there are valid assumptions of illicit competition linked to the objective denigration of SAMIA COMBUSTION Srl, sole proprietorship, put in place by the complainant with notices dated 22/06/2012 (in which the complainant is accused of "improper use" of the SAMIA trademark (document 31 of the complainant file); notice dated 05/07/2012 (in which the complainant was accused of wrong and



fraudulent conduct designed to take advantage of the good faith of a client (document 33 of the complainant file) and the notice dated 23/11/2012 (in which the complainant was accused of promoting models of burners that belonged to the *know how* of SAMIA ITALIA srl (document 34 of the complainant file)).

7. The Court also believes that there are valid prerequisites certifying the persistence of the *periculum in mora* that connotes the prejudice linked to the aggressive behaviour of the complainant.

The evidence deduced, even if apparently dating back over time, provoked a timely reaction from SAMIA COMBUSTION srl, sole proprietorship, by establishing a precautionary legal action in the first days of 2013 before the Court of Monza declaring itself incompetent by an order confirmed on appeal by the same court.

When establishing these proceedings, it appeared necessary to report of the timeliness of the response of the current complainant, which did not result from any element in the documents - neither parties involved in the complaint have made a statement in this respect - showing the effective and definite cessation of the conduct declared illicit by this court.

The damage looming over SAMIA COMBUSTION srl, sole proprietorship, on the continuation of the present market

situation makes it evident that the extent of the damage is unlikely to be restored by the outcome of the proceedings by solely awarding monetary damages by giving such detriment the distinctive character of the SAMIA trademark.

8. Precautionary measures are to be enforced against the complainant relating to the abuse of the SAMIA trademark in the burner sector in order to inhibit further dissemination of derogatory information.

Moreover, this injunction must be given exposure according to the to the methods mentioned in the ruling.

Costs of both preliminary phases are borne by the complainant as specified in the ruling; the interim measures are susceptible to self-stabilisation without establishing the cause of merit.

For this reason

1) in partial acceptance of the complaint made by SAMIA COMBUSTION Srl, sole proprietorship against SAMIA ITALIA Srl.

filed against the judgement dated 01/16/2014, SAMIA ITALIA Srl is ordered to:

- Not use the SAMIA trademark in relation to production, marketing and sale of burners and spare parts (except for the Chinese market);

- Not disseminate denigratory information against SAMIA COMBUSTION srl, sole proprietorship, in regards to the ownership of the exclusive use of the SAMIA trademark in relation to burners and spare parts (except for the Chinese market);

2) Publish this ruling on the home page of the SAMIA ITALIA srl website in a clearly visible way for a period of thirty days, to be done within five days of this ordinance;

3) Pay a penalty in the sum of € 1,000.00 for every product promoted or marketed in violation of the injunction referred to in section 1 of this ruling and for each day of delay of the same;

4) Orders SAMIA ITALIA Srl to reimburse the expenses of the entire pre-trial phase in favour of the complainant; payment of a total of € 8,500.00 (of which € 500,00 for expenses and € 8,000.00 for fees) in addition to legal charges.

As decided in Milan, in the Chambers on 6 March 2014.

The president of the Court

Claudio Marangoni

