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F I L E D	FEDERAL COURT COUR FÉDÉRALE October 07, 2024 07 octobre 2024
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Court File No.	Natasha Fitter
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FEDERAL COURT

BETWEEN:

CARTESIAN THEATRE CORP.

PLAINTIFF

AND

COHESITY, INC.

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [Federal Courts Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Courts Rules](#).

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated:

Issued by:

(Registry Officer)

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO: The Administrator
THE FEDERAL COURT OF CANADA

AND TO: Cohesity, Inc.
251 Little Falls Drive
Wilmington, New Castle
Delaware 19808
United States of America

CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) a declaration that the Defendant has infringed and is deemed to have infringed the Plaintiff's exclusive rights in the Helios Trademark as defined below, contrary to sections 19 and 20 of the *Trademarks Act*;
- (b) a declaration that the Defendant has used the Helios Trademark in a manner likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to section 22 of the *Trademarks Act*;
- (c) a declaration that the Defendant has directed public attention to their services and business in such a way as to cause or to be likely to cause confusion in Canada between the Defendant's services and business and the goods, services and business of the Plaintiff, contrary to section 7(b) of the *Trademarks Act* and the tort of passing off;
- (d) a declaration that the Defendant has passed off their goods and services as and for those of the Plaintiff, contrary to section 7(c) of the *Trademarks Act*;
- (e) interlocutory and permanent injunctions restraining the Defendant, by itself and its servants, workmen, agents, contractors, and employees, and technology partners and all resale partners as defined in article 1.2 of Cohesity's Global Terms and Conditions from directly or indirectly:
 - (i) further infringing the Helios Trademark;
 - (ii) using the Helios Trademark, and any words, or combination of words, or any other design, likely to be confusing with the Helios Trademark, as or in a trademark or trade name, or for any other purpose;
 - (iii) depreciating the value of the goodwill attaching to the

Helios Trademark;

(iv) directing public attention to any of the Defendant's services in such a way as to cause or to be likely to cause confusion between services and business of the Defendant and the goods, services and business of the Plaintiff; and

(v) passing off the Defendant's services as and for those of the Plaintiff;

- (f) damages or an accounting of profits, which may exceed \$100,000, as the Plaintiff may, after due inquiry and full discovery, elect;
- (g) exemplary, aggravated and punitive damages;
- (h) pre-judgment and post-judgment interest on such damages or profits from the date they arose to the date of payment;
- (i) an Order directing that the Defendant, at its own expense and within a time and upon such terms as may be fixed by this Honourable Court, destroy all articles in its possession, custody or power which offend in any way against any order which is made herein, and provide the Plaintiff with a signed representation under oath that such destruction has taken place;
- (j) an Order directing that the Defendant, at its own expense and within a time and upon such terms as may be fixed by this Honourable Court, remove any social media accounts bearing the Helios Trademark and remove all other publications bearing the Helios Trademarks or any words, or combination of words, or any other design, likely to be confusing with the Helios Trademark;
- (k) the Plaintiff's costs of the action on a solicitor-client scale together with

the Plaintiff's disbursements;

(l) all applicable taxes; and

(m) such further and other relief as to this Honourable Court may seem just.

FACTUAL BASIS

The Parties

1. The Plaintiff, Cartesian Theatre Corp. ("**CT**"), is a federally incorporated company and registered in British Columbia with a delivery office located at 1750 - 1055 West Georgia Street, P.O. Box 11125, in the City of Vancouver, in the Province of British Columbia, V6J 3M3.
2. The Defendant, Cohesity, Inc. ("**Cohesity**") is a company incorporated under the laws of the State of Delaware, United States of America. Its registered agent office is located at c/o Corporation Service Company, 251 Little Falls Drive, in the City of Wilmington, in the State of Delaware 19808, in the United States of America.

Business of the Plaintiff

2. CT is an independent software vendor ("**ISV**") in the business of developing and marketing software for commercial and other applications.
3. CT has developed a U.S. patented and Canadian patent-pending software technology known as Helios ("**CT Helios**"). CT Helios is an AI-powered data management platform that combines several functions like analytics, large volumes of managed data in a single platform with respect to music. CT Helios targets enterprise customers amongst others for its music data management system.
4. CT owns the following registered Canadian trademark, incorporating the

element “Helios” (the “**Helios Trademark**”):

Trademark:	Registration Number:	Jurisdiction
HELIOS	TMA1,260,843	Canada

5. The Helios Trademark is registered for use in Canada in association with a range of goods and services such as computer software and databases for use in analyzing music data.
6. CT has performed, and continues to perform, resource intensive, research development, and related business activities in respect to CT Helios since 2015.
7. CT adopted and used Helios as its trade name (“**Helios Trade Name**”) in association with the advertisement and sale of its goods and services in Canada since 2016.
8. CT sought to register the Helios Trade Name with the Canadian Intellectual Property Office (“**CIPO**”) for the “HELIOS” standard characters and with international classifications 9 and 42. On February 25, 2020, CT filed application 2013787 (the “**CT Application**”). An Approval Notice was issued on June 21, 2024. The CT Application was then advertised in Vol. 71 Issue 3638 of the *Trademarks Journal* on July 17, 2024. No opposition proceeding was commenced during the advertising period, which closed on September 17, 2024, with the statutory rights of registration becoming available per section 40 of the *Trademarks Act*.
9. As a result of CT's longstanding usage of the Helios Trade Name and Helios Trademark and the high quality of its goods and services, the Helios Trade Name and Helios Trade Mark is known in industry. It is closely identified with CT and represents valuable goodwill in Canada.
10. By virtue of the Helios Trademark and Helios Trade Name, CT has the

exclusive right to advertise, offer for sale and sell goods and services in association with the Helios Trademark and Helios Trade Name in Canada. By virtue of the trademark registration for the Helios Trademark, the Plaintiff also has the right to preclude others from:

(i) using the Helios Trademark, or any other trademarks, trade names, words or designs likely to be confusing therewith; and

(ii) using the Helios Trademark in a manner likely to depreciate the value of the goodwill attaching thereto.

11. Further, by virtue of the reputation and goodwill associated with the Helios Trademark and Helios Trade Name, the Plaintiff has the right to prevent others from using the same or confusingly similar trademarks or trade names, in association with or in connection with goods, services or a business likely to cause confusion or to create a deception as to the source of those goods, services or business.
12. The Helios Trade Name and the Helios Trademark has been continuously used by CT in Canada and has never been abandoned.

Defendants' infringing activities

13. Cohesity is also an ISV that develops and markets commercial software to businesses.
14. Since on or about August 21, 2018, the Defendant has been offering, selling and advertising an AI-driven data management platform and related services for data management similar to that of CT in Canada (the "**Impugned Services**") under the name "Helios" and "Cohesity Helios" that is confusingly similar to the Helios Trademark and Helios Trade Name (the "**Infringing Names**").
15. The Impugned Services and Infringing Names relate to an AI-driven data management platform, which combines several functions like analytics of large

volumes of managed data and backup, through a single platform.

16. In addition, the Defendant has used the Infringing Names in association with the advertisement and performance of the Impugned Services on internet-based platforms targeted at Canadian consumers. In particular, the Infringing Names are and have been displayed and used by the Defendant on their website, social media platforms, and through its various partner resellers.
17. According to the Canadian Trademarks Database, Cohesity's application 2334939 to trademark "HELIOS" standard characters was filed on January 23, 2024 and Cohesity's application 2349560 to trademark "COHESITY HELIOS" standard characters was filed on September 12, 2024 ("**Cohesity's Applications**"). Both sought protection for international classifications 9 and 42.
18. As of the date of this pleading Cohesity's Applications have not been examined, approved, or registered for use in Canada.
19. Cohesity was at all materials times aware, knew, or had reasonable grounds for knowing that the Helios Trade Name had been extensively used by CT in Canada, and that substantial goodwill and reputation was attached to the Helios Trade Name in the minds of consumers.
20. The CT Application, the Helios Trade Name and CT's rights therein were brought to the attention of Cohesity by letter dated August 12, 2024 (the "**Initial Notice**").
21. The Initial Notice was delivered to Cohesity during the CT Application advertising period which did not close until September 17, 2024, allowing Cohesity to initiate an opposition proceeding if it wished to do so.
22. Cohesity chose not to pursue opposition proceedings to CT's Application.
23. At no time has Cohesity sought or received authorization by CT to use the Helios Trade Name or Helios Trademark for any goods or services in Canada.

24. CT has demanded that the Defendant cease using the Helios Trade Name and the Helios Trademark and any other similar names or trademarks that are confusingly similar thereto. Notwithstanding, CT's demands, Cohesity and its resellers continue to use the Infringing Names to advertise, offer for sale, and sell the Impugned Services in Canada.

Confusion

25. Both CT and Cohesity are engaged in a similar business offering similar products and services in the same geographic area. The products, services and business model of CT and Cohesity substantially overlap, as do their partners and targeted customers.
26. The use of the Infringing Names and offer and sale of the Impugned Services by the Defendant has caused confusion and is likely to cause confusion in Canada between the Defendant's services and business and the goods, services and business of the Plaintiff.
27. In particular, CT's Helios Trade Name and its Helios Trademark and the Defendant's use of the Infringing Names and Impugned Services are both in association with goods and services that include the following similarities:
- (a) Software products for managing large volumes of managed data;
 - (b) Capability to search and analyze large volumes of managed data;
 - (c) Target enterprise customers ("B2B");
 - (d) Encourage adoption in the media and entertainment space;
 - (e) Integrate machine learning or artificial intelligence capabilities;
 - (f) Adopt a software-as-a-service ("SaaS") licensing scheme;
 - (g) Allow a platform-as-a-service ("PaaS") deployment;
 - (h) Allow on-premise deployment;
 - (i) Available as white label products;
 - (j) Share several of the same prominent corporate partnerships that market,

promote, distribute, or provide support for both CT Helios and the Impugned Services and Infringing Names; and

(k) Such further particulars as may be provided.

28. The quality of the services advertised, offered for sale, and/or sold by the Defendant differs from the quality of the Plaintiff's legitimate goods and services in material respects. Accordingly, the Defendants' use of the Infringing Names depreciate the value of the goodwill attached to the Helios Trademark and the Helios Trade Name.

Damages

29. The Defendant has used the Infringing Names for a business purpose, namely, to profit commercially from the substantial goodwill and reputation attached to the Helios Trademark and Helios Trade Name in the minds of consumers.
30. The use of the Infringing Names and offer and sale of the Impugned Services have depreciated the value of the goodwill and reputation of the Helios Trademark and Helios Trade Name, and will continue to result in loss by and damages to the Plaintiff.
31. The Plaintiff is unaware of the full extent of the Defendant's acts of infringement and passing off. Full particulars of the Defendant's acts of infringement and passing off are within the knowledge of the Defendant and not within the knowledge of the Plaintiff. The Plaintiff's claim is in respect of all infringing and passing off activities of the Defendant.
32. By reason of the aforesaid acts of the Defendant, the Defendant has made and will make a profit, and the Plaintiff has suffered and will continue to suffer damages, until the Defendant is restrained.
33. The aforesaid activities of the Defendant will continue and/or recur unless restrained by this Honourable Court.

34. The Plaintiff claims monetary relief that exceeds \$50,000, exclusive of interest and costs.
35. This action is not being proceeded with as a simplified action as the claim is not exclusively for monetary relief in an amount not exceeding \$100,000, exclusive of interest and costs.
36. The Plaintiff proposes that this action be tried at Vancouver, British Columbia.

Dated: October 7, 2024



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Solicitor for the Plaintiff

TO: The Administrator
THE FEDERAL COURT OF CANADA

AND TO:
Cohesity, Inc.
251 Little Falls Drive
Wilmington, New Castle
Delaware 19808
United States of America