**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO.1404 OF 2008**

**Indian School of Business** ….. **Plaintiff**

**V/s**

**Corporate Institute of Management & Science (CIMS)** ….. **Defendant**

Mr. Gaurav Joshi, Senior Counsel with Ms. Shiraza Patodia, Ms. Priyanka Sharma, Ms. Amrita Sharma i/b Mr. Anil T. Agarwal for Plaintiff.
None for Defendant.

**CORAM : A.A. SAYED, J.**

**DATED : 26 MARCH 2015**

**P.C.**

1 The Plaintiff has filed the present suit against the Defendant interalia for a permanent and mandatory injunction restraining the Defendant from passing off its business and services as those of the Plaintiff.

2 Perusal of the records show that despite attempts made by the Plaintiff to serve the Defendant, the summons were returned as unserved with the postal remarks “unknown”. The Defendant was thereafter served by substituted service pursuant to the order dated 20 August 2014. The Plaintiff has filed Affidavit of Service dated 8 October 2014, proving such service.

3 The Plaintiff has filed an Affidavit in lieu of examination in chief dated 3 March 2015 of Ms Savita Mahajan, Deputy Dean of the Plaintiff institution. The Plaintiff has also filed the Compilation of original documents which are taken on record and marked **EXHIBIT "A (colly)".**

4 The case of the Plaintiff is as follows:

That the Plaintiff is managing an internationally acclaimed school at Hyderabad, imparting education in the field of management. The Plaintiff has formed an academic alliance with the world renowned Wharton School at the University of Pennsylvania (hereinafter referred to as **"Wharton"**), the Kellogg School of Management at Northwestern University, USA (hereinafter referred to as **"Kellogg"**), and the London Business School (hereinafter referred to as **"LBS"**). The Plaintiff has a Memorandum of Understanding each with Wharton and Kellogg that provides for a sharing of expertise and academic resources. Considerable time, effort and money has been and continues to be spent by the Plaintiff in the exercise of maintaining and nurturing these relationships with Wharton, Kellogg and LBS with an aim to provide the best educational services to the students at the Plaintiff institution. The Plaintiff has evolved from the need for a world class business school in Asia and had as its founders some of the best minds from the corporate and academic world including a group of Fortune 500 entrepreneurs

5 The Plaintiff has been ranked at No. 20 in the Financial Times, London global B-school rankings. This is the first time an Indian Management School has been ranked amongst the top 20 Business Schools of the world by the Financial Times, London. Within a short time Plaintiff has become a world renowned management school and the brand name 'ISB' together with its students, faculty members, academic programs etc. has tremendous goodwill and reputation globally. The Plaintiff has also acquired tremendous goodwill and reputation worldwide and boasts of a faculty drawn from the top business schools world over including without limitation from Wharton, Kellogg and LBS. Plaintiff spends huge sums of money for the remuneration of these international faculty members from year to year. Plaintiff is the first business school in South Asia to be accredited by the Association to Advance Collegiate Schools of Business (AACSB). The AACSB accreditation has been earned by less than 5% of the world's business schools**.**

6 The photographs of the Plaintiff's founder members as well as Plaintiff's building form part of **EXHIBIT A.** A print out taken by the Plaintiff at the time of filing of the present suit, of the Defendant's website, i.e., http://www.cimsinstitute.org (hereinafter referred to as "**the said Website**") shows the photograph of a building featured on the said website which is actually a photograph of the Plaintiff's building. Similarly,

the photograph appearing in the section “founders” on the said Website is that of the Plaintiff’s founders (hereinafter referred to as the ‘**said Offending Material**’). Furthermore, the Defendant is dishonestly claiming to be associated with Wharton and Kellogg which are in fact associations of the Plaintiff with the said schools.

7 The Defendant has on its website attempted to pass off its activities and website to be associated with the Plaintiff. The Plaintiff has the goodwill in the mark ISB which includes, without limitation, the constitution of the Board of the Plaintiff including photographs thereof, the photograph of Plaintiff’s building as also to the various affiliations/associations that Plaintiff has with business schools world over such as Wharton, Kellogg and LBS. From the said Offending Material, it is clear that the use of such material by the Defendant is not only wrongful and detrimental to the goodwill of the Plaintiff but also dishonest and creates confusion in the minds of the public since the said photographs and information is recognized by the public as being distinctive to the Plaintiff. The indices shown in the said Website are in fact exclusively associated with the Plaintiff by the members of the public. The same have no connection with the Defendant. The Defendant obviously used the impugned material to show that the Defendant is in some way connected with the Plaintiff. The Defendant has tried to take

advantage of the Plaintiff's reputation by creating confusion and causing deception. The Defendant had attempted to pass off its activities as those of the Plaintiff. The Plaintiff's reputation has been adversely affected.

8 The Defendant has failed to file Written Statement despite service of Writ of Summons by way of substituted service. The claim of the Plaintiff has gone uncontroverted. The suit is therefore listed as an undefended suit. As indicated earlier, the Plaintiff has filed an Affidavit in lieu of Examination-in-Chief and Compilation of original documents. The averments in the Plaint and Affidavit in lieu of Examination-in-Chief have remained uncontroverted. In view of the above, the claim of the Plaintiff stands proved. Considering the facts and circumstances of the case, the Plaintiff has made out a case for grant of reliefs and they are entitled to a decree under Order VIII Rule 10 of the Code of Civil Procedure, 1908.

9 In view of the above, the suit is decreed in the following terms:

(i) The Defendant to tender an unqualified apology in writing to the Plaintiff for using the said Offending Material and also to publish the apology in two leading newspapers circulated in all major cities in India within four weeks from today.

(ii) The Defendant is restrained by an order of permanent injunction from (i) in any manner using the said Offending Material either on the said Website or otherwise, so as to pass off or enable others to pass off the Defendant's business or activities as for those of the Plaintiff or in some way connected with the Plaintiff and (ii) using or taking undue advantage of any material or data or information forming a part of or associated with or having any connection with the Plaintiff or its business school or the brand name ISB.

(iii) The Defendant to pay to the Plaintiff a sum of Rs. 10,000/- (Rupees Ten Thousand) as nominal damages within four weeks from today failing which the Defendant to pay the said amount alongwith interest @ 15% p.a. till payment or realization.

(iv) to pay the costs of the suit as per the Bombay High Court Rules.

10 The original documents be returned to the Plaintiff expeditiously by the office.

**(A.A. SAYED, J.)**

**katkam**