

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO.396 OF 2016
ALONG WITH
NOTICE OF MOTION (L.) NO.1280 OF 2016

GSM (Operations) Pty. Limited	...Plaintiff
<i>Versus</i>	
Lina Ritin Ashar & Anr.	...Defendants

Ms. Anuradha Salhotra, a/w Mr. Shrivardhan Deshpande & Mr. Yuvraj Singh, i/b M/s. Desai & Diwanji for the Plaintiff.
Mr. Ashutosh Kane, a/w Niyati Davawala, i/b M/s. W.S. Kane & Co. & Robin George.

CORAM: G.S. PATEL, J
DATED: 26th April 2016

PC:-

1. By consent, parties are agreed that the following order will dispose of the Suit itself at this *ad-interim* stage. Mr. Kane waives service of the Writ of Summons and of the Notice of Motion.

2. In order to appreciate the controversy, it is necessary only to note that it relates to the mark '**BILLABONG**'. According to the Defendants, they have for some time now used this mark in India in relation to their network of schools in India, including in Mumbai

and elsewhere. They now propos to be open a school in the National Capital Region, specifically Noida. The Plaintiff on the other hand is an international company that uses the mark in relation to sports equipments, sports wear, and similar goods including accessories and apparel, particularly in relation to water sports.

3. The parties are agreed that irrespective of the class in which the Defendants choose to apply for or obtain registration, they will limit their use of the mark '**BILLABONG**' such that it is used only in conjunction with the word 'School' or 'High School' or some other expression that indicates that the Defendants are an educational institution. They will further limit their use of this mark (with the additional expression) only to their school and school-related activities such as school uniforms, footwear required for schools, text books, stationery and so on. In other words, the Defendants will not use the mark with or without any additional expression in relation to any goods for sale in the consumer market.

4. It is also agreed that the Plaintiffs will be at liberty to use their mark in relation to any facility, training camp or academy, including for water sports, that they may set up in India but the Plaintiffs will also take care to sufficiently distinguish their facility, training academy or camp and its name from the Defendants' school network and educational institutions.

5. The Plaintiff agrees and undertakes to withdraw its notices of opposition and rectification applications filed before Trademark Registry within a period of 30 days from today. This statement is

made on instructions. It is noted and accepted as an undertaking to the Court.

6. The Suit itself is disposed of in these terms with no order as to costs. Refund of Court Fees, if any, in accordance with rules.

7. In view thereof, the Notice of Motion does not survive and is disposed of accordingly.

8. This order is to be uploaded as the final order disposing of both the Suit and the Notice of Motion.

(G. S. PATEL, J.)