

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

**NOTICE OF MOTION NO.1938 OF 2019
IN
COMMERCIAL IP SUIT NO.1039 OF 2019**

Durian Industries Limited	...	Applicant/Plaintiff
Versus		
Mr. Binder PaL	...	Respondent/Defendant

.....

Mr. Rashmin Khandekar a/w Mr. Atmaram Patade for the Applicant/Plaintiff.

Mr. Aniket Ransubhe i/b Mr. Ajay Basutkar for the Defendant.

Mr. S.S. Toraskar, SO, Court Receiver's office present.

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CORAM : S.C. GUPTE, J.

DATE : 13 DECEMBER 2019

P. C. :

. The notice of motion has been taken out in a commercial IP suit complaining of infringement of trade mark and passing off of goods. Learned Counsel for the Defendant has already filed an affidavit in reply to the notice of motion. Learned Counsel for the Defendant tenders an additional affidavit in reply on behalf of the Defendant. The Defendant has taken up a position in his reply as well as in the additional reply tendered today that the Defendant has withdrawn his trade mark registration application in respect of the mark DURIANTOUCH immediately after the Plaintiff's cease and desist notice. The Defendant has given particulars of his withdrawal

application. The Defendant also submits that he has stopped using the mark DURIANTOUCH and also stopped manufacturing, trading and selling of goods under the said mark. Learned Counsel for the Defendant submits that the Defendant has no intention to use the mark DURIANTOUCH or any other mark identical to, or deceptively similar with, that mark or the mark “DURIAN” at any time in future.

2 On these facts, the notice of motion is disposed of by recording the Defendant's statement and accepting it.

3 As for the disclosure to be made by the Defendant on the basis of orders in terms of prayer -(d) of the notice of motion, liberty is reserved unto the Plaintiff to take such steps as his client may be advised to take.

(S.C. GUPTE, J.)