

**(2013) 04 DEL CK 0429**  
**In the Delhi High Court**  
**Case No : CS (OS) 117 of 2013**

|                                  |    |            |
|----------------------------------|----|------------|
| Pearl Retail Solutions Pvt. Ltd. |    | APPELLANT  |
|                                  | Vs |            |
| Pearl Education Society          |    | RESPONDENT |

**Date of Decision :** 08-04-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, 151  
Trade Marks Act, 1999 — Section 17, 17(1), 17(2), 17(2)(a), 17(2)(a)

**Citation :** AIR 2013 Delhi 181 : (2013) 205 DLT 619 : (2014) 58 PTC 26

**Hon'ble Judges :** Manmohan, J

**Bench :** Single Bench

**Advocate :** Anuradha Salhotra with Mr. Sumit Wadhwa and Mr. Zeeshan Khan, for the Appellant; Ravi Gupta with Mr. Abhishek Baid and Ms. Diva Arora, for the Respondent

## Judgement

Manmohan, J.

I.A. 4103/2013 in CS(OS) 117/2013 [under Order 39 Rule 4 CPC]

1. Present application has been filed by the defendant under Order 39 Rule 4 read with Section 151 CPC for vacation of the interim order dated 23rd January, 2013. It is pertinent to mention that this Court vide order dated 23rd January, 2013 had restrained the defendant, its proprietor/partner, representatives, dealers, servants, assignees and successors from using the word PEARL or any trade mark deceptively similar to the plaintiff's trade mark PEARL in relation to its services as part of its corporate name and/or in the name of any educational institute/s or in any other manner whatsoever. Mr. Ravi Gupta, learned senior counsel for the applicant/defendant submits that the plaintiff does not have exclusive right over the word PEARL. He points out that the word PEARL has been registered in favour of nine other entities under Class 41 and in each class several people have been granted the stand alone mark PEARL. He states that the stand alone mark PEARL has been registered in favour of Sharda Birla under Class 24. He submits that the word PEARL is a generic word. In support of his

submissions, Mr. Gupta relies upon the following Supreme Court's judgment in Skyline Education Institute (Pvt.) Ltd. Vs. S.L. Vaswani and Another, wherein it has been held as under:-

17. In the light of the above, we shall now consider whether the impugned order is vitiated by an error of law apparent on the face of the record or refusal of the High Court to grant injunction in terms of the prayer made by the appellant has resulted in manifest injustice. A little journey into the backdrop of the case shows that the only ground on which the appellant sought temporary injunction against the respondents was that the word "Skyline" is a specific/distinct word and being a prior user, it was entitled to seek a restraint against the respondents from using that word in the name of Institute of Engineering and Technology established by them. The learned Single Judge, after examining the rival pleadings and material placed before him recorded a well-reasoned finding that the appellant has failed to make out a prima facie case. The learned Single Judge opined that the word "Skyline" is a generic word because the same is being used by thousands of persons and institutions as part of their trading name or business activities. The learned Single Judge noted that while the plaintiff is neither approved by AICTE nor affiliated with any university, the respondents have obtained the requisite recognition and affiliation from the statutory bodies concerned and 240 students have already been admitted in the five-year course and held that grant of injunction in terms of the prayer made by the appellant will be inequitable. The Division Bench independently considered the entire matter and expressed its agreement with the learned Single Judge that the appellant has failed to make out a prima facie case for grant of injunction. The Division Bench also agreed with the learned Single Judge that the word "Skyline" was a generic word because it was being used by a large number of people in India and abroad. The Division Bench then held that after recording adverse findings on the issues of prima facie case, balance of convenience and equity, the learned Single Judge was not justified in directing the respondents not to undertake courses in Management, Tour and Travels, etc. and append a note in the advertisements that their Institute has no concern, whatsoever with the appellant's Institution. Accordingly, the Division Bench substantially vacated the modified injunction order passed by the learned Single Judge.

18. In our opinion, the findings recorded by the learned Single Judge and the Division Bench on the crucial factors like prima facie case, balance of convenience and equity are based on a correct and balanced consideration of various facets of the case and it is not possible to find any fault with the conclusions recorded by them that it is not a fit case for restraining the respondents from using the word "Skyline" in the name of the institute established by them. It has not been disputed on behalf of the appellant that the word "Skyline" is being used as trade name by various companies/organisations/business concerns and also for describing different types of institutes/institutions. The voluminous record produced by the respondents before this Court shows that in India as many as 117 companies including computer and

software companies and institutions are operating by using the word "Skyline" as part of their name/nomenclature. In the United States of America, at least 10 educational/training institutions are operating with different names using "Skyline" as the first word. In the United Kingdom also two such institutions are operating. In view of this, it is not possible to agree with the learned counsel for the appellant that Skyline is not a generic word but is a specific word and his client has right to use that word to the exclusion of others.

19. There is another reason for declining the appellant's prayer for grant of temporary injunction. The appellant is shown to have started Skyline Business School in 1997 as one of its division but has conveniently not mentioned that it had started another institution under the aegis of Asian Educational Society housed in the same building where the appellant claims to have its registered office. After three years of starting Skyline Business School, the Director of the appellant vide his letter dated 4-1-2000 permitted the President, Asian Educational Society to use the trade mark Skyline Business School, name and the logo albeit without disclosing as to when Skyline Business School was registered under the Trade Marks Act, 1999. Thereafter, Skyline Group's Asian Educational Society through its President, Shri Kamal Puri entered into an agreement dated 9-12-2001 with Manipal Academy of Higher Education (deemed university) for establishing a branch campus at Skyline Business School, Delhi. Sikkim Manipal University also approved Skyline Business School as a University Study Centre for taking management programme under distance education despite the fact that Skyline Business School is not recognised or approved by AICTE/UGC. In 1996, University of Oxford approved the appointment of a centre in the premises of the appellant at Laxman Public School, Hauz Khas Enclave, New Delhi for certification in Leisure Studies and in Travel and Tourism. In 1997, Skyline Business School entered into a memorandum of cooperation with University of Lincolnshire and Humberside, UK whereby the latter agreed to offer its BBA (Hons.) Tourism course through a centre established at the appellant's campus. In a large number of advertisements issued in the name of the appellant or Skyline Business School, it has not been made clear that they are neither approved nor recognised by any of the statutory bodies like, AICTE, UGC, etc. Of course, in some of the advertisements, it has been mentioned that the degrees/diplomas purported to be awarded by Skyline Business School are not recognised by the Government of India, State Government, UGC/AICTE. All this lends sufficient credibility to the observations made by the Division Bench of the High Court that the present litigation is to have more commerce in education and less education in commerce and gives an impression that functioning of the appellant is shrouded in mystery and those seeking admission in the courses organised by it may find themselves in serious trouble at any given point of time because the degrees and diplomas awarded in the name of foreign universities are not recognised by statutory bodies/authorities in India.

2. Mr. Gupta contends that the plaintiff is not entitled to any injunction as the plaintiff did not disclose in the plaint that the words "ACADEMY OF FASHION" had

been disclaimed in both the registrations filed by the plaintiff. In this connection, Mr. Gupta relies upon a judgment of this Court in Om Prakash Gupta Vs. Parveen Kumar and Another, wherein it has been held as under:-

11. The fact of the disclaimer has not been mentioned in the plaint nor so disclosed orally on 10.8.1999 or on 12.8.1999 and rather clear and categorical statement has been made in the Court also that the trademark "SURAJ CHHAP" is a registered trademark registered at Sr. No. 287631 and obviously the basis of the ex parte injunction is the averment made in the plaint, material placed on record and the representation made in Court. This is a mis-representation of material fact made to the Court.

xxxx xxxx xxxx xxxx

21. The plaintiff thus by suppressing the fact of disclaimer, has prevaricated and has tried to overreach the process of the Court in an attempt to obtain ex parte injunction. The special advantages which the Act gives to the proprietor by reason of the registration of its trademark did not extend to the matter in the trade mark which he had disclaimed. In short, the disclaimed part(s) or matter(s) is not within the protection of the statute.

3. Mr. Gupta also submits that by virtue of Section 17 of the Trade Marks Act, 1999 (for short "Act") the plaintiff cannot claim exclusive right in the word PEARL specially when plaintiff's case is based on infringement and not passing off. In support of his submission, Mr. Gupta relies upon a Division Bench judgment of the Calcutta High Court in Three-N-Products Private Limited Vs. Emami Limited wherein it has been held as under:-

[14] The identity or the similarity of the marks has to be assessed on the basis of entirety of the marks as registered. The identity of the defendant's mark with the plaintiffs as referred to in Clauses (a) and (b) of sub-section (2) of Section 29 of the Act is to be understood in the context of Section 17(1) of the Act. We cannot lose sight of the fact that the right which the owner of the device or label marks obtained is somewhat similar to copyright and it is as much the writing in a device or label and the design and colour combination thereof, over which the registered proprietor gains rights as the manner of depiction thereof. In a given case, it may be that a registered mark is made up of several components which are distinct and in spite of separate registration in respect of such distinguishing part not having been obtained by the owner of registered mark, such proprietor is entitled to cite one distinctive part as being inseparable from the whole registered or such distinctive part and thus, can assert a right over the distinctive part. But as pointed out in Section 17 (2) (a) of the Act, such assertion has to be in conformity with the law of passing off and may not be made in aid of infringement.

[15] Therefore, it is rightly pointed out by the learned Single Judge that the words "the registration thereof shall not confer any exclusive right" appearing towards the end of Section 17(2) have to be understood in the context and the

import of such word is that the registration of the composite mark will not by itself confer any exclusive right as to the part of the composite mark. The registered owner is entitled to protection of its goodwill in such prominent feature as in an action of passing off unless the registered owner seeks to rely of Section 17(2) (b) of the Act in respect of a distinctive matter not common to the trade.

4. Mr. Gupta also submits that plaintiff is running its educational institutions illegally and without obtaining requisite approvals/recognition from All India Council for Technical Education/UGC.

5. Mr. Gupta contends that in the present case there is no chance of confusion or deception as neither the plaintiff nor the defendant are dealing with an ordinary man walking on the road but "with intelligent species of mankind, that means student". Mr. Gupta relies upon a judgment of the Bombay High Court in ITM Trust, Mr. Putcha Venkata Ramana and Mrs. Putcha Lalitha Ramana Vs. Educate India Society, wherein it has been held as under:-

17..... However, as held by the Apex Court the Registration of mark as a whole would not confer any statutory right in favour of the plaintiff with respect to parts of words used in a mark which is registered as a whole. In that view of the matter, I find that merely because the Alphabets ITM which is used in both the registered trade marks of the plaintiff and word University which is used in the second trade mark of the plaintiff are also found in the defendant's trade mark, cannot be a ground to hold that a prima-facie case is made out by the plaintiff for infringement of its statutory rights.

18. As already discussed hereinabove, it is not in dispute that both the plaintiffs and the defendants are engaged in the field of education services and, as such, the use of mark by the defendants will have to be construed in the course of the trade. As already discussed hereinabove, I find that there is no similarity in the marks used by the plaintiffs and that of defendants. In that view of the matter and in view of law laid down by the Apex Court in the case of Durga Dutt Sharma v. Navaratna Pharmaceuticals Laboratories (supra) it will be for the plaintiffs to establish that the mark used by the defendants is so nearly resembling the plaintiff's registered trademark as is likely to deceive or cause confusion in relation to the services in respect of which it is registered. On visual comparison of the marks of both plaintiffs and defendants, I prima facie find that it cannot be said that the mark used by the defendants is of such a nature which can deceive or cause confusion. As held by the Apex Court in the aforesaid case, the persons who would be deceived are the purchasers of the goods or services and it is likelihood of their being deceived would be the subject of consideration.

xxxx xxxx xxxx xxxx

21. The contention of the plaintiffs that they have recently came to know that the defendants are running institute in the name of ITM, when one student desirous of taking education in their institute brought to their notice the adverse

news reports pertaining to the defendants, is also totally unbelievable. The courses conducted by the defendant are duly approved by AICTE for a period of not less than a decade. It is well known that list of the colleges approved by AICTE is widely published and known to one and all at least in the same field. The plaintiffs are also in the education field and it is, therefore, difficult to believe that though defendants' courses are duly approved by AICTE for a period of more than a decade the plaintiffs were not aware of the existence of the defendant. Since I find that there is no similarity in the trademarks of the plaintiffs and the defendants and, in any case, no such similarity which would deceive or create confusion in the mind of the users of the services rendered by the plaintiffs and the defendants, I am of the considered view that plaintiffs have failed to make out a prima-facie case.

6. Mr. Gupta lastly submits that the defendant is willing to confine its activities to District Bhilwara, Rajasthan. He points out that in *Goenka Institute of Education and Research Vs. Anjani Kumar Goenka and Another*, , the Court had declined injunction as the defendant was running a school in a confined area. The relevant portion of *Goenka Institute of Education and Research (supra)* is reproduced hereinbelow:

24. We now answer the issue (as stated in para 21 above) of deceptive similarity and passing off. We are of the view that in the facts and circumstances of the case, there would not arise any deceptive similarity or passing off between the two names of "Goenka Public School" and "G D Goenka Public School" for the following reasons:-

(i) The respondents began their educational institutions in the year 1995 in Delhi by opening a single school. No doubt it can be urged that the respondents could have earned distinctiveness with respect to their name so far as the region of Delhi or in and around Delhi concerned, but it cannot be said that respondents have achieved such amount of distinctiveness or secondary meaning that such distinctiveness would be applicable throughout the country in a period of a year in 1995 or in five years in 2000 that anyone else who in a different district in a different State starts using "Goenka" as part of its name, it would result in passing off, other institutions as that of the respondents. Nothing has been for the present, placed on record that in one year respondents user has spread so extensively throughout India that respondents can prevent the appellant from using the surname "Goenka" more so as "Goenka" is a common surname in India.

(ii) Secondly, students studying in a school in Sikar district of Rajasthan would not be led into believing that they are studying or applying for any school which is the same as the respondents' school in Delhi.

(iii) There is sufficient and noticeable difference between "Goenka Public School" and "G.D. Goenka Public School" when taken in context that respondents are Delhi based and appellant is based in Sikar, Rajasthan. (iv) No doubt the field of operation of both the appellant and the respondents is the same, viz. education,

however, the issue of deceptive similarity will also have to be negated not only on account of "Goenka" being a common surname but also because of the fact that other educational institutions using the name "Goenka" either per se or with other words already existed prior to the respondents establishing the institutions in the year 1994. Furthermore the promoters of the appellant's institute do bear the surname "Goenka" and such user is thus bona fide. It has been found on record that the following institutions have been operating in different parts of India using the word "Goenka" in their trademark or trade name viz. the name of the institution and which are as under:-

(a) Goenka College of Commerce, Kolkatta since 1951 (P.388 of appeal)

(b) Goenka Vidya Mandir, Pilani, since 1983 (P. 397 of appeal), and

(c) Goenka Sanskrit Mahavidyalaya, Banaras, since 1957 (P.403/405 of appeal).

We, therefore, prima facie find that there is merit in the contention of the appellant that various other institutions have been using the word "Goenka" as part of their trademark and trade name even prior to the use of the word "Goenka" by the respondents as part of their trade mark and, therefore, it cannot be said that "Goenka" has become distinctive or acquired a secondary meaning so far as the respondents are concerned. Therefore, neither the appellant nor the respondents can be said to be the first user or prior user for the purposes of becoming exclusive owners of the word "Goenka" to prevent others from using "Goenka". In fact, the number of institutions run by different parties may, after trial, lead to the word "Goenka" being publici juris. Publici Juris, Para 6(iii)

7. On the other hand, Ms. Anuradha Salhotra, learned counsel for the plaintiff/non-applicant states that the plaintiff has been using the trade mark PEARL ACADEMY OF FASHION in respect of an educational institute since 1993. She further states that the said mark has been registered in plaintiff's favour in October, 2005 vide Registration Nos. 1392512 and 1392514 in Class 41 in respect of education and training services and its application for the mark PEARL in Class 41 is pending.

8. She points out that there is no disclaimer of the word PEARL in any of the two aforesaid registrations. Ms. Salhotra submits that the disclaimer of the other words of the registered trade mark fortifies the plaintiff's claim that the PEARL is a distinctive trade mark in respect of the education and training services.

9. Ms. Salhotra specifically denies that the plaintiff has suppressed the factum of disclaimer. She points out that the plaintiff at the first instance had filed certified copies of its registrations.

10. Ms. Salhotra submits that the fact that the trade mark PEARL or a variation thereof is registered in the name of other proprietors, does not make PEARL a generic term. According to her, the defendant has failed to give any evidence of any use of the word PEARL by other persons in respect of educational institutes

and, therefore, PEARL cannot be considered to be a generic term. She states that u/s 28(3) of the Act where two or more persons are registered proprietor of trademarks which are identical with or nearly resemble each other, the exclusive right to the use of any of those trademarks shall not be deemed to have been acquired by any one of those persons merely by registration of the trademarks but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole registered proprietor.

11. Ms. Salhotra submits that the interpretation of Section 17(2)(a) of the Act as given by Calcutta High Court in the case of Emami Limited (supra) is against the golden rule of interpretation of statutes. According to her, the meaning of section being clear on a plain reading, the Court could not add words "passing off" and "goodwill" while interpreting the said section.

12. Ms. Salhotra submits that the Act does not require any registration or recognition with AICTE or UGC. She states that courses offered by some of the plaintiff's institutions do not fall within the purview of recognition by AICTE and UGC and some of the courses that require regulatory permissions, have been granted permissions.

13. She submits that the judgment of this Court in Goenka Institute of Education and Research (supra) is inapplicable to the facts of the present case as in the said case GOENKA was the family name of trustees of both the parties and further both the plaintiff and defendant had started schools with the word GOENKA more or less at the same time.

14. Having heard learned counsel for the parties, this Court is of the view that the word PEARL cannot be said to be a generic word in respect of education and training institute. In the opinion of this Court, a word may be generic qua a specific business or trade or industry but not across the board for all businesses or trades or industries. For instance, word "Arrow" is a generic word qua archery business but is an arbitrary word qua shoes.

15. Similarly, PEARL is a generic word qua gems and jewellery business but not with regard to educational business as the said expression has no connection or correlation with education or training services.

16. In Kirorimal Kashiram Marketing and Agencies Pvt. Ltd. Vs. Shree Sita Chawal Udyog Mill, the Court after considering the judgment of Goenka Institute of Education and Research (supra) has observed as under:-

5. In our opinion, the learned Single Judge has fallen into an error in declining the grant of interim injunction to the appellant. The overriding aspect in a case such as the present is that deer is a prominent part of the trademark of the appellant. Copying of a prominent part of a trademark leads to deceptive similarity especially when the product of both the parties is the same. The expression "Deer" was arbitrarily adopted by the appellant with respect to its product being rice. A deer has no connection or co-relation with the product

namely rice. Such arbitrary adoption of a word mark with respect to a product with which it has no co-relation, is entitled to a very high degree of protection, more so, as the appellant's trademark is a registered trademark. The use by the respondent of its trademark is admittedly subsequent to that of the appellant. The first registration of the appellant is of the year 1985 and then of 1990. The respondent claims the first user only from the year 1999, and, as the later discussion will show, that is also not a correct fact because the user of the respondent is prima facie only from around the year 2003.

17. Consequently, the arbitrary adoption of the word mark PEARL with respect to services with which it has no correlation, is entitled to very high degree of protection, especially when the trade mark is a registered trade mark.

18. The judgment of Skyline Education Institute (Pvt.) Ltd. (supra) is also clearly inapplicable to the facts of the present case as the said case relates to unregistered trademarks and the parties therein admitted that a number of other institutes were using the SKYLINE mark.

19. This Court is further of the view that mere filing of a search report from the Trademark office does not prove that the marks mentioned in the search report are actually being used. To prove the defence of a common mark, it is imperative on the part of the party who relies upon the mark of third parties to produce cogent and clear evidence of use of the said mark. In Novartis AG Vs. Crest Pharma Pvt. Ltd. and Another, it has been held as under:-

32. The next contention of the defendant is that there are number of other companies who are using the similar trade mark as that of the plaintiff, those are CEFF, SIMCEF, CEF, BECEF, SYCEF, CEACEF, SYCEF, SICEF and C-CEF. The contention of the defendant has no force as the defendants have failed to produce any evidence of the actual user of the said marks referred by the defendants. In order to take the said defence, the party has to give cogent evidence before this court as to since when these trade marks are being used and what is the goodwill and reputation of the said trade marks. The defendant in the present case has not produced the samples of the third parties in order to show as to whether the said marks are being used and goods are available in the market or not. The similar defence raised in various cases has been dealt by the courts from time to time in the cases of Century Traders (supra), Corn Products Refining Co. Vs. Shangrila Food Products Ltd., and Shri Pankaj Goel Vs. Dabur India Ltd., . Relevant part of the decision of Corn product (supra) is reproduced hereinbelow:-

17. The series of marks containing the common element or elements therefore only assist the applicant when those marks are in extensive use in the market. The onus of proving such user is of course on the applicant, who wants to rely on those marks. Now in the present case the applicant, the respondent before us, led no evidence as to the user of marks with the common element. What had happened was that Deputy Registrar looked into his register and found there a

large number of marks which had either "Gluco" or "Vita" as prefix or suffix in it. Now of course the presence of a mark in the register does not prove its user all. It is possible that the mark may have been registered but not used. It is not permissible to draw any inference as to their user from the presence of the marks on the register.

33. A mere filing of the search report from the trademarks office does not prove as to whether the marks mentioned in search report was actually been used or not. It is imperative on the part of the party who relies upon the marks of third party to produce cogent and clear evidence of user in order to prove the defence of common marks to the trademark on the basis of the third party user. Hence, in the absence of valid and cogent evidence, the submission of the defendant cannot be accepted.

20. This Court is in agreement with the plaintiff's counsel argument that the plaintiff has not suppressed the fact that part of the composite mark, namely, "Academy of Fashion" had been disclaimed. Certified copy of the registration certificates had been filed along with the plaint.

21. In fact, in view of the judgment of this Court in Om Prakash Gupta (supra), plaintiff's trade mark will be limited to the parts of the composite mark which have not been disclaimed.

22. This Court is of the opinion that in view of Section 17(2)(a)(i) of the Act in the present case the trade mark PEARL ACADEMY OF FASHION would be read as PEARL alone as ACADEMY OF FASHION has been disclaimed and the word PEARL is a subject matter of separate registration application.

23. Section 17 of the Act reads as under:-

17. Effect of registration of parts of a mark.-(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark-

(a) contains any part-

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

24. The Calcutta High Court judgment in Emami Limited Vs. Three N Products Private Limited (supra) is clearly inapplicable to the facts of the present case as in the said case it was held that word AYUR was not capable of registration as it was common to trade and not a distinctive mark.

25. This Court is also of the view that Section 17(2) of the Act relates to a composite registered trademark and the circumstances under which exclusive rights can be claimed in part of the registered mark. Accordingly, this Court is not in agreement with the view of the Calcutta High Court that u/s 17(2) of the Act the registered owner has to prove passing off to claim exclusivity of a part of whole of the registered trade mark.

26. Consequently, this Court is of the opinion that the plaintiff has exclusive proprietary rights in the word PEARL u/s 28(1) read with Section 17(2)(a)(i) of the Act by virtue of two registrations in its favour and non-disclaimer of mark PEARL as well as pending application with regard to the word PEARL.

27. This Court is of the view that the Act does not require any registration with AICTE or recognition from UGC. In any event, from the plaintiff's supplementary affidavit, it is apparent that educational institutes that require regulatory permissions are in possession of the same. The ITM Trust & Ors. (supra) judgment offers no assistance to the defendant as in the said case the Court found that the two marks were not similar.

28. Also the defendant's undertaking to confine the use of the mark to a particular district is irrelevant as plaintiff certainly has the right to set up institutes all over India and this Court cannot stop/prevent plaintiff's natural progression specially when its institutes are already running in the same State of Rajasthan.

29. Further, the judgment of Goenka Institute of Education and Research (supra) deals with a case of concurrent and honest user of a family name. In the present case, the mark in issue is not a family name but a distinctive trade mark and the defendant's use is certainly not concurrent. In fact, the defendant's use of the mark PEARL is eighteen years after it was used by the plaintiff and five years after the registration of plaintiff's mark.

30. Moreover, from the photograph of the defendant college, it is apparent that only the word PEARL has been prominently used by the defendant on its signage.

31. Consequently, the plaintiff being prior user and registered owner of the trade mark PEARL in respect of education and training services has the exclusive right to use the same. With the aforesaid observations, present application is dismissed.

I.A. 981/2013 in CS(OS) 117/2013

In view of the detailed order passed in I.A. 4103/2013, the ex parte ad interim order dated 23rd January, 2013 is confirmed till the disposal of the suit and defendant is directed to forthwith change or amend its corporate name and/or name of its educational institutes by deleting the mark PEARL.

Accordingly, present application stands disposed of.

CS(OS) 117/2013

List the matter before Joint Registrar for completion of pleadings and admission/denial of documents on 18th April, 2013, the date already fixed.