

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

BEACH MART, INC.,)
 Plaintiff)
)
 v.)
)
 L&L WINGS, INC.,)
 Defendant)
 _____)
 L&L WINGS, INC.,)
 Counterclaimant)
)
 v.)
)
 BEACH MART, INC.,)
 Counter-Defendant)
 _____)
 L&L WINGS, INC.,)
 Plaintiff)
)
 v.)
)
 BEACH MART, INC., SUPER WINGS, LLC,)
 and SHEPARD R. MORROW)
)
 Defendants.)

No. 2:11-cv-00044-FL

No. 2:14-cv-00052-FL

CONSENT JUDGMENT

Pursuant to a comprehensive settlement agreement between Plaintiff Beach Mart, Inc. and Defendant L&L Wings, Inc., which completely disposes of all claims in the above-captioned civil actions, the parties have stipulated and agreed to the entry of the following CONSENT JUDGMENT and request that the Court approve of and enter same into the record. After considering the parties' stipulation, the previous findings and rulings of the Court, and the jury verdict, the Court finds and ORDERS as follows:

1. This Court has jurisdiction over the subject matter of this action and over parties Beach Mart, Inc. and L&L Wings, Inc. (the “Parties”), and venue in this action is proper in this judicial district.

2. As of April 29, 1993, L&L Wings, Inc. and Shepard R. Morrow entered into a license agreement for the WINGS trademark (the “Morrow License”). Shepard R. Morrow was the owner of the WINGS trademark licensed in that agreement, L&L was the licensee of the WINGS trademark under that agreement, and the Morrow License has remained valid and in full force and effect up until the date of this Order.

3. Beach Mart is the successor in interest, by assignment agreement dated April 18, 2014, to all of the trademark and intellectual property rights of Shepard R. Morrow, including Morrow’s ownership of the trademark WINGS, and Morrow’s rights under the 1993 Morrow License.

4. Since April 18, 2014, through its acquisition of the rights of Shepard R. Morrow, Beach Mart has been and remains owner of the right, title and interest in and to the WINGS trademark for apparel, beachwear, beach accessories, and retail store services (the “Trademarks”). Also, based upon usage that began January 1, 2006, Beach Mart is the owner of the right, title and interest in and to the SUPER WINGS trademark. L&L shall not in any way dispute, oppose, or challenge Beach Mart’s ownership of the WINGS and SUPER WINGS trademarks.

5. L&L Wings, Inc. has no ownership interest in or to the WINGS or SUPER WINGS trademarks, and L&L shall not use either of these trademarks for any purpose other than only as licensee of Beach Mart in a manner permitted by the License Agreement which the Parties have executed as part of the settlement of this action.

6. Notwithstanding use of the WINGS mark permitted pursuant to the License Agreement, L&L shall not adopt or use any new trademark to identify its retail beachwear stores that (i) uses the words “Wing”, “Wings,” or “Super,” (ii) contains words that rhyme with the words “Wing”,

“Wings,” or “Super,” or (iii) is confusingly similar to the WINGS or SUPER WINGS trademarks. So long as any new trademark chosen by L&L to identify its retail beachwear stores meets these criteria, then Beach Mart shall not oppose L&L’s application to register such new trademark with the US Patent and Trademark Office and shall not encourage any third party to oppose L&L’s application to register such new trademark with the US Patent and Trademark Office.

7. As part of the Parties’ settlement, L&L has executed a document transferring its ownership of two federal trademark registrations — federal trademark Registration No. 3,458,144 (the “’144 Registration”), and federal trademark Registration No. 4,193,881 (the “’881 Registration”) — to Beach Mart. Pursuant to 15 U.S.C. § 1119 and in order to correct the records of the United States Patent & Trademark Office with respect to the registrations of the parties to this action, the Clerk of Court is hereby directed to send a certified copy of this Consent Judgment, within 14 days of the date hereof, to the Director of the United States Patent and Trademark Office, Office of the Solicitor, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313-1450. Upon receipt of this order, the Director of the United States Patent and Trademark Office shall correct the records of the Principal Register regarding ownership of the ’144 and ’881 Registrations as follows:

i. As of the date of the applications, the owner of the ’144 Registration and the ’881 Registration shall be changed to Shepard R. Morrow.

ii. Pursuant to the corrective assignment of the ’144 Registration and the ’881 Registration from L&L Wings, Inc. to Beach Mart, Inc. as ordered herein, the owner of the ’144 Registration and the ’881 Registration shall hereafter be Beach Mart, Inc.

8. All claims in this litigation, not previously adjudicated, and not resolved hereinabove, are hereby dismissed with prejudice, with each party bearing its own costs and expenses.

9. This Consent Judgment amends and supplements the Court’s final judgment dated March 29, 2021 with respect to disposition of the ’144 Registration and the ’881 Registration.

10. This Court has and retains jurisdiction over the parties and of this action for consideration and disposition of any right to relief arising under this Consent Judgment.

11. The Clerk of Court is hereby directed to enter the foregoing as final judgment and to terminate the above-captioned action.

CONSENTED TO BY THE PARTIES: The undersigned parties hereby consent to the entry of the foregoing final judgment, agree with its findings and to abide by its terms, and hereby waive any right of appeal therefrom.

/s/ Stephen F. Shaw

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SO ORDERED this the 25 day of February, 2022.



The Honorable Louise W. Flanagan
United States District Court Judge