

Summary of proceedings

On 7 September 2020, F45 Training Pty Ltd ACN 162 731 900 (as plaintiff) (**F45**) filed proceedings in the Supreme Court of New South Wales against Body Fit Training Company Pty Ltd ACN 622 444 008, Cameron Falloon and Richard Burnet (collectively, the **BFT Defendants**).

In the proceedings, F45 alleged that the BFT Defendants had copied various aspects of the F45 system and, in doing so, had engaged in misleading and deceptive conduct, passing off and had infringed certain F45 trademarks.

The BFT Defendants denied all of the allegations and strenuously defended their position. The BFT Defendants also filed a cross-claim in the NSW Supreme Court seeking orders that the relevant F45 trademarks be declared invalid and be revoked should F45 succeed.

Discontinuance

In another comprehensive win for BFT, on 24 May 2022:

- (a) F45 filed a notice of discontinuance, discontinuing the proceedings, pursuant to which, F45 was required to pay BFT's costs; and
- (b) BFT filed a notice of discontinuance, discontinuing their cross-claim, pursuant to which, F45 was again required to pay BFT's costs.

This follows BFT's success in the Federal Court defending a patent infringement claim brought by F45. In those proceedings Justice Nicholas found F45's patents to be invalid and that even if they were valid, BFT were not in breach of them.

F45 has since appealed Justice Nicholas' decision and BFT is confident of its prospects on this appeal.

BFT's comments

The BFT Defendants' are pleased that the Australian Supreme Court proceedings F45 commenced against the company have been discontinued and have always maintained that the proceedings were completely without merit.

The BFT Defendants' viewed the Australian Supreme Court proceedings, and other actions taken by F45, as a mis-guided response to BFT's strong growth and reputation in the market.

Other action taken by F45 has included that, on the final day of the Federal Court proceedings, F45 made trade-mark applications in New Zealand, Canada and Singapore (3 of the 5 countries BFT currently operates in) for the word "Bodyfit". BFT questions what legitimate interest can F45 have in trademarks similar to the words associated with one of its biggest competitors. Ultimately, in BFT's opinion, it is F45's franchisees and shareholders who are losing out through unnecessary litigation and tactics such as this.

BFT welcomes the competitive relationship between the two brands, however, BFT with the full support of Xponential Fitness, will remain unintimidated by the litigious strategy adopted by F45 and continue to focus on their operations and franchisee support.