

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 256 of 1980

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Between

- (1) CADBURY LIMITED
- (2) CADBURY SCHWEPPE'S HUDSON LIMITED
- (3) CADBURY SCHWEPPE'S PTY. LTD.

Plaintiffs

- and -

- (1) MAGAN LAL JIWA AND SONS LIMITED
- (2) OCEANIA PRINTERS LIMITED

Defendants

Messrs. Munro, Leys & Co.

Solicitors for the Plaintiffs

Messrs. Stuart, Reddy & Co.

Solicitors for the Defendants

R U L I N G

The Plaintiff, Cadbury Limited, is a world renowned manufacturer of chocolate goods, and the other Plaintiffs are two of its many subsidiaries.

The Plaintiffs market chocolate bars in distinctive style wrappers and labels.

The first defendant is a recently formed company producing chocolate bars in Fiji and has been marketing its goods in wrappers which the Plaintiffs claim amounts to a "passing off" of its goods as goods of the Plaintiffs. The main remedy sought by the Plaintiffs is an injunction to prevent the first defendant from using wrappers which are so similar to those of the plaintiffs, or which are of such a colour or which bear such words or designs as to mislead or confuse the members of the public into the belief that goods of the 1st defendant are goods of the Plaintiffs', or that the 1st defendant is closely associated with the Plaintiffs.

The Plaintiffs complained specifically about two wrappers used by the 1st defendant, but in respect of one, that which most clearly resembled the Plaintiffs' wrappers, the 1st defendant has discontinued using it and has given an undertaking not to use it again. With regard to the other wrapper referred to by the Plaintiffs' affidavit the similarity is not so obvious and other wrappers used by the 1st defendant are of such an obviously different colour - and design - except only for a pattern in gold representing a sort of squashed rectangle with inwardly curving sides, which is a feature of all wrappers used by the Plaintiffs, that any "passing off" will be obviously more difficult to prove.

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The Plaintiffs now apply for an interim injunction which would in effect anticipate the main remedy sought by the Plaintiffs.

Clearly the operations of the 1st defendant are very small scale compared with the very extensive operations of the Plaintiffs, and an interim injunction such as that applied for by the Plaintiffs would have a much more serious effect on its business than could any possible damage to the Plaintiffs by the use of the wrappers concerned. By no possible means could the Plaintiffs be said to be liable to suffer irreparable damage. In the circumstances I decline to order the interim injunction sought and this application is dismissed.

(sgd.)

LAUTOKA,

G. O. L. Dyke

12th September, 1980

JUDGE