

1980 February 25

[TRIANTAFYLIDIS, P.]

COOPER MCDUGALL & ROBERTSON LIMITED,
Plaintiffs,

v.

STELLA COSMETICS CO. LTD., AND OTHERS,
Defendants.

(Action No. 3/79).

Practice—Injunction—Interlocutory injunction—Infringement of trade mark in foreign country—Affidavit evidence regarding the position in law in such country in relation to the trade mark and the development of proceedings relevant to it.

After filing an action for an injunction restraining the defend- 5
ants from infringing their registered trade mark "PIF PAF", in
respect of an insecticide in an aerosol form, by selling a similar
product under the trade mark "PAFF PAFF" the plaintiffs
applied *ex parte* and obtained an interlocutory injunction restrai-
ning the defendants from acting as complained of until the deter- 10
mination of the action. As during the hearing of the proceedings
for making the interlocutory injunction absolute it was made
clear that the plaintiffs did not allege that the said product was
on sale in Cyprus but they only alleged that their trade mark was
infringed because such product was manufactured and bottled 15
in Cyprus and then exported to Dubai, counsel for the parties
were allowed to adduce affidavit evidence as regards the position
under Dubai law in relation to the trade mark concerned; and
as a result there were filed two affidavits by the defendant and
one by plaintiffs. When counsel for plaintiffs sought to file 20
a further affidavit, by means of which it was mainly intended to
place before the Court information regarding recent develop-
ments, and particularly on January 17, 1980, in proceedings in
Dubai which appeared to relate to the same dispute between the
parties as the one to which this action related, counsel for the 25
defendants took objection on the ground that such a course
would entail delay prejudicial to his clients.

Held, that one striking feature is that this process of producing evidence by way of affidavits regarding the position in law in

Dubai in relation to the trade mark of the plaintiffs and the proceedings relevant to it which were instituted there, has been initiated by the defendants themselves; that, therefore, they cannot complain if the plaintiffs wish to inform the Court by way of affidavit of a development which has occurred only on January 17, 1980, that is after the last adjournment of this case on December 20, 1979, when it was fixed for final addresses on February 22, 1980; that, in all the circumstances of this case it is just and equitable to allow the plaintiffs to file the affidavit in question and it is so, hereby, ordered accordingly.

Order accordingly.

Cases referred to:

Beecham Group Limited and Another v. Mohammed Ahmed Zamin Pima and Co., Fleet Street Reports, 1979, vol. 5, part. 3, p. 121.

Application.

Application by plaintiffs for leave to file an affidavit in an action whereby they seek an injunction restraining the defendants from infringing their registered trade mark "PIF PAF" in respect of an insecticide in an aerosol form by selling similar product under the trade mark "PAFF PAFF"

G. Nicolaidis with M. Nicolatos, for the plaintiffs.

L. Papaphilippou with P. Soteriou, for the defendants.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following decision. This action was filed on August 8, 1979, and by means of it the plaintiffs are seeking an injunction restraining the defendants from infringing their registered trade mark "PIF PAF", in respect of an insecticide in an aerosol form, by selling a similar product under the trade mark "PAFF PAFF". They are, also, claiming damages and other ancillary relief.

On the same date the plaintiffs applied *ex parte* for an interlocutory injunction restraining the defendants from acting as complained of until the determination of the action.

This interlocutory injunction was issued on August 9, 1979, and one of the terms on which it was granted was that the plaintiffs would furnish security in the sum of C£5,000 answerable for the payment, if necessary, of reasonable compensation to the defendants for any expense or injury occasioned to them by the execution of such injunction.

The case was fixed on August 14, 1979, so that then the defendants might show cause why the interlocutory injunction should not continue in force.

On that date the defendants appeared through counsel and they were granted leave to file an opposition to the interlocutory injunction; and the case was adjourned to August 31, 1979. 5

Eventually the hearing of the matter of the aforesaid injunction was adjourned to September 20, 1979, as an order was made that an affiant for the plaintiffs, Georghios Kapakiotis, should be made available for cross-examination by counsel for the defendants. Later on, however, such a course did not become necessary. 10

On September 20, 1979, the hearing of the matter of the interlocutory injunction took place.

During the said hearing it was made clear that the plaintiffs do not allege that the product "PAFF PAFF" is on sale in Cyprus but they only allege that their trade mark is infringed because the said product is manufactured and bottled in Cyprus and then exported to Dubai. 15

At the conclusion of the hearing counsel for the defendants stated that he intended to adduce evidence as regards the position under Dubai law in relation to the trade mark concerned of the plaintiffs and the further hearing of the matter was adjourned, therefore, to October 18, 1979. 20

On October 16, 1979, counsel for the defendants filed an affidavit sworn by an advocate in Dubai named Samir Kanaan. 25

On October 18, 1979, leave was given to counsel for the plaintiffs to file an affidavit in reply and the case was adjourned to November 17, 1979.

On November 10, 1979, counsel for the plaintiffs filed an affidavit dated October 28, 1979, sworn by an advocate in Dubai named Fuad Barahim. 30

When the case came up before the Court on November 17, 1979, the following record was made:

"Mr. G. Nicolaidis for plaintiffs. 35

Mr. L. Papaphilippou with Mr. P. Soteriou for defendants.

5 *Mr. Papaphilippou* submits that the affidavit dated October 28, 1979, and filed by counsel for plaintiffs, on November 10, 1979, exceeds the scope of the relevant order of the Court made on October 18, 1979, because it raises new factual issues, and he applies for an adjournment in order to be enabled to consider whether to apply that certain parts of the said affidavit should be struck out or to file an affidavit in reply thereto.

10 *Mr. Nicolaidis* does not object to an adjournment, but he states that he does not concede, in any way, that the said affidavit exceeds the scope of the order made on October 18, 1979. He adds that, in any event, he has no objection to the filing by defendants of an affidavit in reply.

15 *Court:* This case is adjourned, in the light of the above statements of counsel, to December 20, 1979 (9.30 a.m.)”.

Subsequently, there was filed, on December 19, 1979, a further affidavit of advocate Kanaan, which is dated December 16, 1979.

20 On December 20, 1979, there appeared for the defendants Mr. Ph. Valiandis who informed the Court that counsel for the defendants, Mr. L. Papaphilippou, wished to address the Court further in the light of the affidavits filed and that he would be able to do so after the Christmas vacation of the Court, as during that period he might have to be absent from Cyprus.
25 There was no objection on the part of counsel for the plaintiffs, who reserved, however, the right to address the Court too, and the case was fixed for further addresses on February 22, 1980.

30 On that date counsel for the plaintiffs sought to file a further affidavit of advocate Barahim, which was sworn on January 23, 1980.

It appears that this affidavit aims at serving the following three purposes:

35 First, to supplement the affidavit of advocate Barahim dated October 28, 1979, which was filed in reply to the affidavit of advocate Kanaan dated October 7, 1979.

I do not think that the matter in relation to which it is sought to supplement by his new affidavit the earlier affidavit of advocate Barahim is really of a basic nature.

Secondly, it is sought to correct the report of the case of *Beecham Group Limited and another v. Mohammed Ahmed Zamin Pima and Co.*, which appears in the Fleet Street Reports, 1979, vol. 5, part 3, p. 121, by correcting what is alleged by advocate Barahim to be a printing error in such report. 5

Thirdly, and mainly, it is intended, by means of this affidavit—which was marked *exhibit “A”* for identification when leave was sought to file it—to place before the Court information regarding recent developments, and particularly on January 17, 1980, in proceedings in Dubai which appear to relate to the same dispute between the parties as the one to which this action relates. 10

The said proceedings were first referred to in the affidavit of advocate Kanaan dated December 16, 1979.

Counsel for the defendants has objected to the filing of the affidavit marked “A” for identification on the ground that this course will entail delay prejudicial to his clients. 15

I have considered the position in the light of the history of these proceedings, as I have thought fit to set it out, above, in this Decision:

One striking feature is that this process of producing evidence by way of affidavits regarding the position in law in Dubai in relation to the trade mark of the plaintiffs and the proceedings relevant to it which were instituted there, has been initiated by the defendants themselves; and, therefore, they cannot complain if the plaintiffs wish to inform the Court by way of affidavit of a development which has occurred only on January 17, 1980, that is after the last adjournment of this case on December 20, 1979, when it was fixed for final addresses on February 22, 1980. 20 25

In all the circumstances of this case, without pronouncing at this stage as regards the significance or relevance of anything contained in the affidavits and counter-affidavits, to which I have referred, and which relate, as already stated, to the situation in Dubai, I find it just and equitable to allow the plaintiffs to file the affidavit “A” for identification, and it is so, hereby, ordered accordingly. 30 35

The costs of the proceedings on February 22, 1980, and today will be costs in the cause in this action but, in any event, not

against the defendants; and if the filing of this affidavit entails any delay which would render inadequate the security of C£5,000, which has been furnished, as aforementioned, by the plaintiffs, the defendants are at liberty to apply by summons
5 that this security should be increased, so that it should cover adequately the matter of any damage that may be suffered by the defendants through the interlocutory injunction continuing to be in force.

Order accordingly.