

BETWEEN:

REMINGTON RAND LIMITED PLAINTIFF;

AND

TRANSWORLD METAL COMPANY LIMITED, carry-
ing on trade and business as Transworld Trading
Company and the said TRANSWORLD TRADING
COMPANY DEFENDANTS.

1960
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Jan. 14
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Mar. 10
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*Trade mark—Infringement—Motion to quash interim injunction restrain-
ing importation into, and sale in Canada of shavers alleged to bear
trade marks similar to plaintiff—Balance of convenience.*

The plaintiff, owner of the Canadian registered trade marks “Remington”,
“Rollelectric” and “Princess” in respect *inter alia* of electric shavers,
sells shavers bearing these marks, and also one bearing the unregistered
trade mark “Roll-a-matic”, in Canada. All are made by the plaintiff’s
United States parent company, Remington Rand Electric Shaver
Division, Sperry Corporation. The defendants sold electric shavers in
Canada bearing the same marks. Some of the latter were made in
Germany by Remington Rand C.M.B.T. Elektro-Rasierer and others
by the plaintiff’s parent company in the United States. The plaintiff
obtained an interim injunction restraining such sales by the defendants
with leave to the defendants to move to dissolve the injunction. On
a motion brought by the defendants to do so

Held: That evidence of the sale by the defendants in Canada of shavers
bearing the registered trade marks showed a strong *prima facie* case
of infringement and the balance of convenience favoured restraining
the defendants from selling shavers bearing such marks until trial.
Dunlop Rubber Co. Ltd. v. A. A. Booth & Co. Ltd. and *Gillette Safety
Razor Co. et al. v. Diamond Edge Ltd.* (1926) 43 R.P.C. at 139 and 310
respectively, referred to.

MOTION under s. 51(4) of the *Trade Marks Act* to
prohibit the importation or other dispositions of electric
shavers and parts thereof bearing the trade marks “Reming-
ton”, “Princess” or “Roll-a-Matic” and not being wares
of the plaintiff.

D. F. Sim for the motion.

H. E. Manning, Q.C. contra.

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 et al.

THURLOW J. now (March 10, 1960) delivered the following judgment:

This is an application to dissolve an interim injunction granted by Cameron J. on January 14, 1960. In the order, leave to move to dissolve the injunction was reserved to the defendants.

The plaintiff is the owner in Canada of the registered trade marks "Remington", "Rollectric", and "Princess" in respect of, *inter alia*, electric shavers and sells in this country several types of electric shavers bearing the mark "Remington" and either the mark "Rollectric" or the mark "Princess" or the unregistered mark "Roll-a-matic". The shavers sold by the plaintiff are made in the United States by Remington Rand Electric Shaver Division, Sperry Rand Corporation, of which the plaintiff is a wholly-owned subsidiary company. The validity of the plaintiff's registered trade marks is not attacked in these proceedings.

The evidence shows that the defendants have sold in Canada electric shavers bearing these marks, some of which were made in Germany, and some of which were made in the United States by the plaintiff's parent company and were outwardly, at least, identical with those sold by the plaintiff. The shavers which came from Germany bore the marks "Remington" and "Rollectric" and were manufactured by Remington Rand, C. M. B. H. A. B. T. Elektro-Rasierer, Frankfurt. No relationship or connection between this company and the plaintiff has been shown.

Notwithstanding the relationship between the plaintiff and its United States parent corporation, the evidence of use of the marks by the defendants in Canada, in my opinion, shows a strong *prima facie* case of infringement of the marks. *Vide Dunlop Rubber Company Ltd. v. A. A. Booth & Co. Ltd.*¹, where Tomlin J. said at p. 144:

The "Dunlop" tyre business is conducted under a system whereby in different countries there are different Companies, so that the English Company owns in this country a number of Trade Marks and the French "Dunlop" Company in France holds Trade Marks in France which are identical with the English Trade Marks, and I gather that a similar condition of affairs obtains in Italy and possibly in other countries. It follows from that that a French "Dunlop" tyre having upon it the Trade Marks which are identical with the English Trade Marks cannot be imported for sale into this country without infringing the English Trade Marks.

¹ (1926) 43 R.P.C. 139.

I also think that, notwithstanding the difficulty that may be experienced in ascertaining the defendants' damages from being restrained if they succeed in the action, the balance of convenience in this case favours restraining them until the trial. The case bears little similarity to *Parke, Davis & Co. et al. v. Gilbert Surgical Supply Co. Ltd.*¹, which was cited on behalf of the defendants. Here, while a purchaser of one of the defendants' shavers gets a shaver which, in the case of those imported from the United States, is made by the same manufacturer as those sold by the plaintiff, it is not unlikely he will think that the shaver is one sold and warranted by the plaintiff, since it bears one or more of the plaintiff's marks. If so, he will be deceived, and when he examines the warranty card and discovers the true situation the plaintiff's good will is, I think, likely to suffer. The extent of the injury that is likely to occur to the plaintiff's good will if the defendants are not restrained will, I think, be substantial, and it too will be difficult to estimate accurately in damages. And there is the additional feature that, in the meantime, if not restrained, the defendants will be permitted to go on committing what amounts, *prima facie* at least, to deception of the public. *Vide Gillette Safety Razor Company et al. v. Diamond Edge Ltd.*²

On the other hand, the evidence does not satisfy me that the unregistered mark "Roll-a-matic" indicates in Canada shavers sold only by the plaintiff. It seems to me that it indicates, if anything, no more than that the shaver is one of a type of shaver made by the particular manufacturer, and it represents nothing as to the identity of the seller of it in Canada. However, the mark "Remington" on the same shavers appears to me to be sufficient to entitle the plaintiff to the same protection with respect to them.

The injunction will, accordingly, be continued, restraining the defendants until the trial from infringing the trade marks "Remington", "Rollectric", and "Princess" by importing or distributing shavers bearing any of these trade marks.

Costs of the motion will be costs in the cause.

¹ (1959) 18 Fox P.C. 175.

² 43 R.P.C. 310.

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