

21st August, 1986.

Between Vekaplast Heinrich Laumann KG Plaintiff
and T A Picot (C I) Limited First Defendant
and Vekaplast Windows (C I) Limited Second Defendant

DEPUTY BAILIFF: The Court deals with the prayer of the Order of Justice, as amended, as follows:-

The Court orders both defendants to acknowledge that the right of ownership of the trademarks and names Vekaplast and Veka and Vekaplast Windows is vested in the plaintiff.

(b) has been withdrawn by the plaintiff.

(c) (1) An injunction is granted to the plaintiff that the first defendant shall not claim nor procure that the second defendant should claim that either of them is:-

- (i) the sole authorised supplier of Veka products or
- (ii) the sole licensed manufacturer of ultra high performance German Veka rigid PVC windows, residential doors, patio doors and roller shutters.

(2) An injunction is granted to the plaintiff that the second defendant shall not claim that it is, within the Bailiwick of Jersey:-

- (i) the sole authorised supplier of Veka products or
- (ii) the sole licensed manufacturer of ultra high performance German Veka rigid PVC windows, residential doors, patio doors and roller shutters.

(d) The only real dispute this afternoon revolves around the question of costs. There are, in our view, a number of salient points:-

- (i) the question of registration of a trademark or tradename does not establish ownership; common law rights arise from use. In our unanimous view, there never could be a valid argument that the plaintiff did not own the trade-names worldwide long before this action was commenced. Miss Nicholls confirmed that the result of obtaining registration is that the law thus deems the right to have been in existence at an earlier time;
- (ii) the second defendant had, in realistic terms, given up its claims to the ownership of the trademark in Sept-

A

ember, 1985, because it had neither put in evidence nor asked for a further extension of time, and this was long before the hearings in May, 1986, of the present action;

B

(iii) when, in April, 1986, the plaintiff, by consent, amended its Order of Justice to include the injunction, the defendants had a further opportunity to concentrate their corporate minds upon the issues and could have conceded paragraphs (a) and (c) of the prayer before the May, 1986, hearings;

C

(iv) we consider that the claims to ownership contained in the answer were never tenable.

In all the circumstances, we consider Mr Thacker's request to be justified and we order that the first and second defendants, jointly and severally, shall pay 90% of the plaintiff's taxed costs.

D

That completes the matter.

E

F

G

H