
O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

KENNETH FREDERICK PATTRON
(Trading as "THE CARIBBEAN DAILY
NEED CHEMICAL WORKS")

Appellant
(Defendant)

- and -

COLGATE PALMOLIVE LIMITED

COLGATE PALMOLIVE (TRINIDAD) LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

Philip Conway Thomas & Co.,
61, Catherine Place,
~~WILSON FREEMAN,~~
~~6/8 Westminster Palace Gardens,~~
~~Artillery Row,~~
London, SW1E ~~1AA~~ 6HB

Solicitors for the Appellant.

SLAUGHTER AND MAY,
35 Basinghall Street,
London, EC2V 5DB.

Solicitors for the Respondents.

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

KENNETH FREDERICK PATTRON
(Trading as "THE CARIBBEAN DAILY
NEED CHEMICAL WORKS")

Appellant
(Defendant)

- and -

COLGATE PALMOLIVE LIMITED
COLGATE PALMOLIVE (TRINIDAD) LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
	<u>In the High Court</u>		
1.	Chamber Summons	7th July 1970	1.
2.	Order	28th September 1970	2.
3.	Amended Writ of Summons	28th September 1970	4.

(ii)

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
4.	Amended Statement of Claim	5th October 1970	7.
5.	Defence	- January 1971	13.
6.	Reply	7th April 1971	15.
7.	Proceedings	3rd February 1972	16.
	<hr/>		
	<u>Plaintiffs' Evidence</u>		
8.	Errol Brathwaite	3rd February 1972	20.
	<hr/>		
9.	Proceedings	3rd February 1972	21.
	<hr/>		
	<u>Plaintiffs' Evidence</u>		
10.	Errol Brathwaite (continued)	3rd February 1972	23.
11.	George Gomez	4th February 1972	24.
12.	Joan Rochard	4th February 1972	27.
13.	Lorellin Stephens	4th February 1972	30.
14.	Gordon Reece	4th February 1972	36.
	<hr/>		
15.	Proceedings	4th February 1972	37.

(iii)

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
16.	Ruling	7th February 1972	38.
	<hr/>		
	<u>Plaintiffs' Evidence</u>		
17.	Gordon Reece (continued)	7th February 1972	41.
	<hr/>		
18.	Proceedings	7th February 1972	42.
19.	Ruling	7th February 1972	42.
	<hr/>		
	<u>Plaintiffs' Evidence</u>		
20.	Gordon Reece	7th and 8th February 1972	43.
21.	Lorellin Stephens (recalled)	8th February 1972	51.
22.	Lloyd Ayoung	8th February 1972	51.
23.	Ricardo Hernandez	8th February 1972	52.
	<hr/>		
24.	Proceedings	8th February 1972	53.
25.	Ruling	8th February 1972	54.
	<hr/>		

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
	<u>Plaintiffs' Evidence</u>		
26.	Ricardo Hernandez	8th February 1972	56.
27.	Proceedings	8th and 9th February 1972	57.
28.	Judgment	14th February 1972	65.
29.	Order	14th February 1972	73.
	<u>In the Court of Appeal</u>		
30.	Notice and Grounds of Appeal	13th March 1972	74.
31.	Judgment of Hyatali, C.J.	3rd April 1974	77.
32.	Judgment of Corbin, J.A.	3rd April 1974	98.
33.	Judgment of Rees, J.A.	3rd April 1974	102.
34.	Order granting Final Leave to Appeal to Her Majesty in Council	3rd March 1975	118.

E X H I B I T S

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
GR8	Letter, of J.D. Sellier & Co. to Mr. Ramkerrysingh	11th August 1967	120.

(v)

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>
LS1	Market Research	November 1968	122.
LS2	Market Research	May 1969	128.
EB5	Letter, Deputy Registrar General to T.M.Kelshall & Co.	26th September 1969	131.
EB6	Letter, Deputy Registrar General to T.M.Kelshall & Co.	26th September 1969	132.
LS3	Market Research	November 1969	133.
GR3	Letter, Colgate Palmolive (Trinidad) Ltd. to Mr. Mohammed	17th June 1970	138.
LS4	Market Research	June 1970	139.
LS5	Market Research	December 1970	143.
LS6	Questionnaire, Colgate Palmolive (Trinidad) Ltd.	June 1971	148.
GR1	Sales Sheets	1955 - 1971	151.

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

<u>Description of Document</u>	<u>Date</u>
<u>In the High Court</u>	
Writ of Summons	24th March 1970
Statement of Claim	5th June 1970

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

KENNETH FREDERICK PATTRON
(Trading as THE CARIBBEAN DAILY NEED CHEMICAL
WORKS)

Appellant
(Defendant)

- and -

10

COLGATE PALMOLIVE LIMITED

COLGATE PALMOLIVE (TRINIDAD) LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

In the High
Court

CHAMBER SUMMONS

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

Between

No. 1
Chamber Summons
7th July 1970

20

COLGATE PALMOLIVE LIMITED

Plaintiff

And

KENNETH FREDERICK PATTRON
trading as "Caribbean Daily Need
Chemical Works"

Defendant

LET ALL parties concerned attend the sitting
Judge in Chambers at the Court House, Port of
Spain (Red House) on Friday the 10th day of July,
1970, at the hour of Nine (9) o'clock in the

In the High Court

No. 1

Chamber Summons
7th July 1970
(continued)

forenoon on the hearing of an application by the Plaintiff for an order that the Defendant be restrained whether by himself or his agents or servants or any of them or otherwise howsoever from infringing the Plaintiff's registered Trade Marks Numbers 397 and 811 registered in Class 48, and from passing off or assisting others to pass off toothpaste not the goods of the Plaintiff by use in connection therewith in the course of trade of the word "Tringate" or any other colourable or misleading imitation of the word "Colgate" until after the Trial of this action or until further order and that the costs of this application be costs in this action.

10

Dated this 7th day of July, 1970.

This Summons was taken out by Messrs. J.D. Sellier & Co., of No. 13, St. Vincent Street, Port of Spain, Solicitors for the Plaintiff.

Plaintiff's Solicitors.

Note: If you do not attend either in person or by your Solicitor at the time and place mentioned such order shall be made and proceedings taken as to the Judge may seem just and expedient.

20

To: Messrs. Fitzwilliam Stone & Alcazar,
Independence Square,
Port of Spain.

Solicitors for the Defendant.



No. 2

Order
28th September
1970

No. 2

ORDER

30

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

Between

COLGATE-PALMOLIVE LIMITED Plaintiff

- And -

KENNETH FREDERICK PATRON
(Trading as "The Caribbean Daily
Need Chemical Works") Defendant

IN CHAMBERS

In the High
Court

On the 28th day of September, 1970

Entered on the 14th day of October, 1970

—
No. 2

Before the Honourable Mr. Justice Ralph Narine.

Order
28th September
1970
(continued)

UPON hearing Counsel for the Plaintiff and
the Defendant

10 AND UPON reading the Affidavits of Victor
Humphrey Stollmeyer sworn to the 29th June, 1970
and 23rd September, 1970 respectively and filed
herein on behalf of the Plaintiff.

AND UPON being satisfied that the proposed
additional Plaintiff hereinafter referred to has
consented to be added as a Plaintiff herein.

20 AND the Plaintiff and the Proposed additional
Plaintiff by their Counsel undertaking to abide by
any Order the Court or a Judge may make as to
damages in case the Court or a Judge should here-
after be of opinion that the Defendant shall have
sustained any by reason of this Order which the
Plaintiff and the proposed additional Plaintiff
ought to pay

30 IT IS BY CONSENT ORDERED AND DIRECTED that
the Defendant Kenneth Frederick Pattron by his
agents or servants or otherwise howsoever be
restrained and an Injunction is hereby granted
restraining him from infringing the Plaintiff's
registered trade marks Nos. 397 and 811 registered
in Class 48, and from passing off or assisting
others to pass off toothpaste not the goods of the
Plaintiff or the proposed additional plaintiff as
and for the goods of the Plaintiff or the proposed
additional plaintiff by use in the connection
therewith in the course of trade of the word
"Tringate" or any other colourable or misleading
imitatio n of the word "Colgate" until after the
trial of this action or until further order.

40 SUBJECT HOWEVER to the proviso that the said
injunction shall have no effect or application in
respect of stocks of "Tringate" toothpaste in the
possession of distributors as of 28th September
1970 and nothing done in connection with the sale
or distribution of the said stocks shall constitute
a breach thereof.

In the High Court

No. 2

Order
28th September
1970
(continued)

AND IT IS BY CONSENT FURTHER ORDERED AND DIRECTED that the Plaintiff be at liberty to add Colgate Palmolive (Trinidad) Limited as a Plaintiff herein and to amend the Writ of Summons in such manner as may be necessary in consequence thereof and that service on the Defendant of the amended Writ of Summons be dispensed with

AND that the Plaintiff and the proposed additional Plaintiff be at liberty to amend the Statement of Claim delivered on behalf of the Plaintiff in such manner as may be necessary in consequence of the amendment to the Writ of Summons referred to above.

10

AND that the Plaintiff and the proposed additional Plaintiff deliver the amended Statement of Claim seven (7) days after the date of this Order

AND that the Defendant deliver his Defence twenty one (21) days after delivery of the amended Statement of Claim.

20

AND that the Plaintiff and the proposed additional Plaintiff deliver a Reply (if any) to the Defence seven (7) days after delivery of same

AND that the trial of this action be by a Judge in the month of January, 1971 on a date to be fixed by the Registrar

AND that the costs of this application be costs in this action fit for Counsel.

Registrar

No. 3

Amended Writ
of Summons
28th September,
1970

No. 3

30

AMENDED WRIT OF SUMMONS

Amended pursuant to the Order of the Honourable Mr. Justice Ralph Narine dated the 28th day of September, 1970

J.D. SELLIER & CO.,

Plaintiffs' Solicitors

J.D. SELLIER & CO.,
SOLICITORS, CONVEYANCERS
AND NOTARIES PUBLIC

In the High
Court

—
No. 3

Amended Writ
of Summons
28th September,
1970
(continued)

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

Between

COLGATE PALMOLIVE LIMITED and

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiff s

10

- and -

KENNETH FREDERICK PATTRON
(Trading as "The Caribbean Daily Need
Chemical Works")

Defendant

"ELIZABETH the Second, by the Grace of God,

Queen of Trinidad and Tobago and of her
other Realms and Territories, Head of the
Commonwealth."

20 TO: Kenneth Frederick Pattron
3 Coronation Street,
Aranguez, San Juan.

WE command you, that within eight days after the
service of this Writ on you inclusive of the day of
such service you do cause an Appearance to be
entered for you in our Supreme Court, Port of Spain,
in an Action at the suit of

COLGATE PALMOLIVE LIMITED and

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

30 And take notice, that in default of your so doing the
Plaintiff may proceed therein, and Judgment may be given
in your absence

WITNESS : THE HONOURABLE Sir A.Hugh McShine,

In the High
Court

Chief Justice of our said Court of Port of Spain,
in the said Island of Trinidad, this 24th day of
March, 1970.

No. 3

Amended Writ
of Summons
28th September,
1970
(continued)

N.B. This Writ is to be served within Twelve
calendar months from the date hereof, or, if
renewed within six calendar months from the date
of the last renewal including the day of such date,
and not afterwards.

The Defendant may appear hereto by entering an
Appearance either personally or by Solicitor at the
Registrar's Office, at the Court House in the Town
of Port of Spain. 10

The **First** Plaintiff claims :

1. An injunction to restrain the Defendant whether
by himself his servants or agents or any of them or
otherwise howsoever from doing the following acts,
that is to say, infringing the **First** Plaintiff's
registered Trade Marks Nos. 397 and 811 (**as
amended**) registered in Class 43.

2. Obliteration upon oath of the word "Tringate"
upon all toothpaste tubes, boxes or other contain-
ers the use of which bearing the word "Tringate"
would be a breach of the injunction prayed for in
paragraph 1. 20

And the Plaintiffs jointly claim :

~~2-~~ 3. An injunction to restrain the Defendant
whether by himself his servants or agents or any of
them or otherwise howsoever from doing the follow-
ing acts or any of them, that is to say, passing off
or assisting others to pass of toothpaste not the
goods of the Plaintiffs **or of either of them** as and
for the goods of the Plaintiffs **or of either of
them** by use in connection therewith in the course
of trade of the word "Tringate" or any colourable
or misleading imitation of the word "Colgate". 30

~~3. Obliteration upon oath of the word "Tringate"
upon all toothpaste tubes, boxes or other containers
the use of which bearing the word "Tringate" would be
a breach of the first injunction prayed for.~~ 40

4. Obliteration or modification upon oath of all
words upon all articles in the possession custody
or control of the Defendant the use of which
bearing the words to be obliterated or modified

In the High Court

Between

COLGATE-PALMOLIVE LIMITED and

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs

And

KENNETH FREDERICK PATTRON

Trading as: The Caribbean Daily Need Chemical Works

Defendant

No. 4
Amended Statement of Claim
5th October 1970
(continued)

AMENDED STATEMENT OF CLAIM

10

Amended this 2nd day of October, 1970 pursuant to the order of the Honourable Mr. Justice Ralph Narine dated the 28th day of September, 1970.

1. The ~~First Plaintiffs are~~ is a Company incorporated in the Dominion of Canada with a registered office at No. 64 Colgate Avenue, Toronto, Canada and was formerly registered in this country under Part "X" of the Companies Ordinance, Chapter 31 No. 1. The ~~Second Plaintiff is~~ a wholly owned subsidiary company of the First Plaintiff and is a company duly formed and registered under the said Companies Ordinance in July, 1960 and has its registered office at Kirpalani Roundabout, Churchill-Roosevelt Highway, Barataria, in the Island of Trinidad.

20

2. The ~~First Plaintiffs are~~ is the proprietors of the trade marks "Colgate" (word) and "Colgate" (label). The said trade marks were registered in the Register of Trade Marks as No. 397 on the 10th June, 1958, and No. 811 on the 18th December, 1959, respectively, in class 48 in respect of perfumery including toilet articles preparation for the teeth and hair and perfumed soap (the trade mark No. 811 having been amended on the 6th December, 1963). The said registrations ~~is are~~ and ~~has have~~ been at all material times valid and subsisting.

30

~~3. The Plaintiffs wholly own a subsidiary Company, Colgate Palmolive (Trinidad) Limited, (hereinafter called "the subsidiary Company") which was duly formed and registered under the said Companies Ordinance in July 1960, and the subsidiary Company are the registered users of the said trade marks Nos. 397 and 811.~~

In the High Court

No. 4

Amended Statement of Claim
5th October
1970
(continued)

10 4. 3. The First Plaintiffs and associated companies (including the Second Plaintiff since 1960) have extensively used the said trade marks in connection with their goods, including their toothpaste, for a period upwards of 35 years throughout the world and have widely advertised and continue extensively to advertise and use the said trade marks in connection with their goods, including toothpaste.

PARTICULARS

20 "Colgate" was the right and proper surname of one of the founders of the Colgate group of companies and the word "Colgate" has been used as a trade mark in connection with the goods (including toothpaste) of the Colgate group of Companies for upwards of 35 years. The said registered trade marks No. 397 consists of the word "Colgate". The said registered trade mark No. 811 consists mainly of the word "Colgate" printed in very distinctive script in white on a red background. The word "Colgate" is the most prominent feature of the said registered trade mark No. 811 and is and has been for upwards of 35 years a prominent feature of the packages and tubes in which the Colgate group of companies (including the Plaintiffs since their respective incorporations) has sold marketed and distributed in the course of trade their goods including toothpaste.

40 5. The ~~subsidiary Company~~ Second Plaintiff ~~have~~ has (as mentioned in paragraph 3 hereof) since July, 1960 purchased toothpaste from the First Plaintiff and its associated companies and has imported, and ~~distributed toothpaste, the goods of the Plaintiffs and have~~ sold and distributed the same in Trinidad and Tobago in packages bearing with the consent of the First Plaintiff the said trade marks and ~~have~~ has widely advertised the same and continues extensively to advertise and use the said trade marks in connection with the said goods.

6. 5. By reason of the matters alleged in paragraphs

In the High
Court

No. 4

Amended State-
ment of Claim
5th October
1970
(continued)

~~4-and-5~~ 3 and 4 hereof, toothpaste bearing the word "Colgate" (and in particular bearing the word "Colgate" in the said distinctive script in white on a red background) on tubes and packages have has come to be exclusively known in the trade and to the public as the ~~Plaintiff's toothpaste-~~ ~~exclusively.~~ goods of the First Plaintiff and/or its associated companies, including the Second Plaintiff.

~~7.~~ 6. The Defendant is the sole owner of a business carried on under the trade name or style of "The Caribbean Daily Need Chemical Works" and manufactures and deals in toothpaste.

10

~~8.~~ 7. The Defendant has since the registration of the said trade marks and before the issue of the Writ in this action infringed the First Plaintiff's said registered trade marks and has passed off his toothpaste and for ~~the Plaintiffs' toothpaste~~ the goods of the First Plaintiff and its associated companies (including the Second Plaintiff) by putting upon the market and selling toothpaste in tubes and packages bearing the word "Tringate".

20

PARTICULARS

The Defendant's toothpaste is sold in tubes and boxes bearing the word "Tringate" printed in white on a red background the last four letters of which are printed in script lettering closely imitating the distinctive script of the First Plaintiff's said registered trade mark No. 811 of 1959 (which said trade mark is, as mentioned above, used by the Second Plaintiff in the course of trade in connection with its toothpaste). ~~so as to closely resemble the last four letters of the Plaintiffs' Trade marks;~~ Further or alternatively the entire word "Tringate" is calculated to lead the public into believing that toothpaste sold in tubes and boxes bearing the mark "Tringate" is a local product of the First Plaintiffs or of the subsidiary Company or associated companies of the First Plaintiff (including the Second Plaintiff) or is otherwise associated with the Plaintiffs or either of them.

30

40

~~9.~~ 8. The use by the Defendant of the said ~~label~~

get up and of the word "Tringate" in connection with toothpaste not of the Plaintiffs' manufacture or merchandise of the Plaintiffs or of either of them is an infringement of the First Plaintiff's said registered trade marks and is calculated to lead and has in fact led to deception and to the belief that the Defendant's toothpaste is the toothpaste goods of the Plaintiffs or of either of them and is further calculated to cause and must have caused toothpaste not of the Plaintiffs' manufacture or merchandise to be passed off as and for the toothpaste goods of the Plaintiffs or of either of them and the Plaintiffs have thereby suffered and will suffer damage.

In the High Court

No. 4

Amended Statement of Claim
5th October
1970
(continued)

10

~~10.~~ 9. The Plaintiffs are unable to give particulars of all the Defendant's acts of infringements or passing off, but will claim to recover in respect of all such acts.

And the First Plaintiffs claims:

20

1. An injunction to restrain the Defendant whether by himself his servants or agents or any of them or otherwise howsoever from doing the following acts, that is to say, infringing the First Plaintiff's registered Trade Marks Nos. 397 and 811 (as amended) registered in Class 48.

30

2. Obliteration upon oath of the word "Tringate" upon all toothpaste tubes, boxes or other containers the use of which bearing the word "Tringate" would be a breach of the injunction prayed for in paragraph 1.

And the Plaintiffs jointly claim:

40

~~2.~~ 3. An injunction to restrain the Defendant whether by himself his servants or agents or any of them or otherwise howsoever from doing the following acts or any of them, that is to say, passing off or assisting others to pass off toothpaste not the goods of the Plaintiffs or of either of them as and for the goods of the Plaintiffs or of either of them by use in connection therewith in the course of trade of the word "Tringate" or any colourable or misleading imitation of the word "Colgate".

~~3. Obliteration upon oath of the word "Tringate" upon all toothpaste tubes, boxes or other containers the use of which bearing the word "Tringate" would be a breach of the first injunction prayed for.~~

In the High Court

No. 4

Amended Statement of Claim
5th October 1970
(continued)

4. Obliteration or modification upon oath of all words upon all articles in the possession custody or control of the Defendant the use of which bearing the words to be obliterated or modified would be a breach of the ~~second~~ injunction prayed for **in paragraph 3.**

5. An inquiry as to damages or at the Plaintiff's option an account of profits and payment of all sums found due upon taking such inquiry or account.

6. Costs.

10

7. Further or other relief.

C.A. Jacelon
of Counsel

C.A. Jacelon
of Counsel.

DELIVERED this 5th day of June, 1970 by Messrs. J.D. SELLIER & COMPANY of No. 13 St. Vincent Street, Port of Spain, Solicitors for the Plaintiff.

J.D. Sellier & Company,
Plaintiff's Solicitors.

20

Redelivered as Amended this 5th day of October, 1970 by Messrs. J.D. SELLIER & COMPANY of No. 13 St. Vincent Street, Port of Spain, Solicitors for the Plaintiffs.

**J.D. Sellier & Co.,
Plaintiffs' Solicitors.**

To: Messrs. Fitzwilliam, Stone & Alcazar,
78 Independence Square,
Port of Spain.
Defendant's Solicitors.

30

DEFENCEIn the High
CourtTRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

No. 5

Defence
January 1971

Between

COLGATE PALMOLIVE LIMITED and

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs

And

10 KENNETH FREDERICK PATTRON (Trading as
the Caribbean Daily Need Chemical Works)

Defendant

DEFENCE1. The defendant admits paragraphs 1 and 2 of
the amended Statement of Claim.20 2. The defendant admits that the word "Colgate"
has come to be exclusively known when used on
tubes and packages containing toothpaste as
denoting the goods of the first plaintiff or its
associated companies but does not admit any of the
other allegations contained in paragraphs 3, 4 and
5 of the amended Statement of Claim.3. The defendant admits paragraph 6 of the
amended Statement of Claim.4. Since about the month of January, 1970, the
defendant has put upon the market and sold tooth-
paste manufactured locally by him, in tubes bearing
a label consisting of :-30 (i) the word "Tringate" printed in off-white
against an orange-red background,
markedly different in colour from the
bright red background used in the first
plaintiff's said registered trade mark
No. 811 juxtaposed to this

(ii) a blue disc containing:-

In the High
Court

—
No. 5

Defence
January 1971
(continued)

- (a) the words "The Caribbean Daily
Need Chemical Works", "Trinidad,
W.I." Printed in off-white, and
- (b) a map of Trinidad in off-white
with a gate depicted within it
in orange-red

The said tubes have been sold in boxes bearing a similar label except that white has been used on the boxes rather than off-white.

5. Save as expressly admitted in paragraph 4 hereof, the defendant denies every allegation contained in paragraph 7 of the amended Statement of Claim. 10

6. The defendant denies that by his use of the said get-up and/or of the word "Tringate" or otherwise he has infringed either of the first plaintiff's said registered trade marks. The defendant's said use of the said get-up and/or word is not calculated to lead and has not in fact led to any deception or to the belief that any toothpaste of the defendant is the toothpaste of the plaintiffs or either of them, nor is such use calculated to cause nor must it have caused nor has it in fact caused toothpaste not of the plaintiffs' manufacture or merchandise to be passed off as and for the toothpaste of the plaintiffs or of either of them. The plaintiffs have not suffered nor will they suffer any damage as alleged in paragraph 8 of the amended Statement of Claim. 20

7. Save as to admissions hereinbefore expressly made the defendant denies each and every allegation of fact contained in the amended Statement of Claim as if the same were herein severally set forth and traversed seriatim. 30

Michael de la Bastide
of Counsel.

Delivered this day of January, 1971 by Messrs. Fitzwilliam, Stone & Alcazar, 78 Independence Square, Port of Spain, Solicitors for the Defendant.

Defendant's Solicitors. 40

to: Messrs. J.D. Sellier & Co.,
Plaintiff's Solicitors,
13 St. Vincent Street,
Port of Spain.

15.

We accept delivery of the Defence herein
although the time for so doing has expired.

Plaintiffs' Solicitors.

In the High
Court

No. 5

Defence
January 1971
(continued)

No. 6

REPLY

No. 6

Reply
7th April 1971

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

Between :

10

COLGATE PALMOLIVE LIMITED and

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs

And

KENNETH FREDERICK PATTRON (Trading as
The Caribbean Daily Need Chemical Works)

Defendant

REPLY

20

1. Save as to admissions therein contained and
as hereinafter stated the Plaintiffs join issue
with the Defendant on his Defence.

30

2. The Plaintiffs will contend that the markings
and colours on the tubes containing the Defendant's
toothpaste are immaterial with respect to the
Defendant passing off his toothpaste as and for the
toothpaste of the Plaintiffs as the tubes containing
the Defendant's toothpaste and the said toothpaste
have always been marketed and sold in boxes. In
any event the Plaintiffs will contend that such
differences as there may be between the label of the
Defendant and the label of the Plaintiffs (whether

In the High Court

on the said tubes or boxes) are so insubstantial as not to have prevented deception.

No. 6

Reply
7th April 1971
(continued)

3. Further the words "The Caribbean Daily Need Chemical Works" "Trinidad, W.I." printed on the Defendant's boxes are so inconspicuous as not to have presented deception and the map of Trinidad with a gate superimposed in it depicted on the said boxes rather than preventing deception would and did in fact contribute to such deception for the reasons set forth in paragraph 7 of the amended Statement of Claim.

10

C.A. Jacelon
of Counsel

DELIVERED by Messrs. J.D. Sellier & Co., of No. 13 St. Vincent Street, Port of Spain, Solicitors for the Plaintiffs herein, this 7th day of April, 1971.

Plaintiffs' Solicitors.

To: Fitzwilliam Stone & Alcazar,
78 Independence Square,
Port of Spain.

20



No. 7

No. 7

Proceedings
3rd February,
1972

PROCEEDINGS

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 544/70

Between

COLGATE-PALMOLIVE LIMITED

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
Plaintiffs

30

And

KENNETH FREDERICK PATTRON (Trading as The
Caribbean Daily Need Chemical Works)
Defendant

Mr. Wharton Q.C. with Mr. Daly for the Plaintiff

In the High Court

Mr. Hosein Q.C. with Mr. De la Bastide for the Defendant

—
No. 7

Before the Honourable Mr. Justice Denis
Malone

Proceedings
3rd February,
1972
(continued)

MR. WHARTON

Plaintiff alleges Defendant has infringed its trade mark.

10 1st Plaintiff is a foreign Co. wholly owning the 2nd Plaintiff. Defendant trades under the name of "The Committee in Daily Need Chemical Works".

Not disputed that 1st Plaintiff is the proprietor of the trade "work." They are really two trade marks viz:

[sic]

(a) word "Colgate"

(b) label

Long family history to 1st Plaintiff.

20 "Colgate" is the name of a person No difficulty in reaching that conclusion.

Its toothpaste is sold simply under the name "Colgate"

1st registration in Trinidad in relation to toothpaste was in 1932

(Will ask Court to bring up this first Registration so it may be put in evidence)

Mr. Sookrim will give evidence of Co's sales broken down amongst different classes of the public.

30 Originally Co. operated in Trinidad through its agent T. Geddes Grant.

About 1955 Co. decided to come in on its own and operate its own distributive service. So they founded Colgate Palmolive (T'dad) Ltd.

Defendant first started to sell its products here in early 1970 under the name "Tringate".

In the High
Court

—
No. 7

Proceedings
3rd February,
1972
(continued)

"What does the eye bring to the mind?"

The eye being that of the ordinary person - That is a matter for the Court not a witness.

Is it of any significance that one has a bright red background and the other the orange red?

Plaintiff's present label which is registered has been in some use for some years. Before that the script of the word "Colgate" was different as it was in black letters.

10

The Registrar's block is to show:

- (a) long user,
- (b) that changing the script the Defendant has deliberately imitated the new style

(Produced 6 Colgate packages marked Ex. A1-6)

Produced a "Tringate" package marked Ex. B1 (Subsequently Mr. Hosein, without objection from Mr. Wharton, produced 5 other Tringate packages marked Exs. B2 - 6)

Produced a Colgate "Fluoride" package marked Ex.C. On the market since end of 1969.

20

Before "C" was a different fluoride package. Produced with tube as box Ex. D1 and tube D2.

After Independence and before CARIFTA, manufacturers thought it advisable to introduce in some way the name of a place thus "Trin" or "Trinto"

I have here a mark of Brooklyn Estate Arima. The mark is "Trinarima".

(Mr. Hosein objects to the docs. as being irrelevant. If he is setting up a trend or system then you must place material facts to support it. Unless it is pleaded we are taken by surprise as we don't know if they are registered or their effect on the market - paras 492, 493, and 494 of 10th Ed. Phipson.)

30

Mr. Wharton:

A witness has not to be called to put in

the documents. We have pleaded it in the "Particulars" to 7 to show that "Tringate" is a local product. Defendant has not asked for particulars or interrogatories.

In the High Court

—
No. 7

Court will rule subsequently on this point when it comes to the evidence.

Proceedings
3rd February,
1972
(continued)

26th June, 1970 Registration 397 of "Colgate"
- Ex. E.

10 25th June, 1970 Registration 811 "Colgate" in
white against red. Ex. F.

Registration takes effect from date of application so Ex. E takes effect from 10th June, 1958 & from 18th December, 1959. Both marks now in force.

"Tringate" is a made-up word and is composed partly of "Trinidad" and partly of "Colgate". The word "gate" if applied to garden gates etc. might be one thing but in relation to "toothpaste" that is another matter.

20 If the general label of a product tends to deceive the fact that the manufacturer puts his name on the label that is totally irrelevant. Indeed it is worse as it suggests that the proprietor of the trade mark has licensed the manufacturer to produce the goods.

Therefore the label indicates that product was made in Trinidad and relates to gates but in fact it relates to toothpaste.

30 On the other hand "Colgate" is a proper name. Proper names are not registrable as such unless it can be shown that the name is by long use associated with a particular product.

The name in white of Tringate against its orange red background is all part of the deception.

Again printing of manufacturer's name on the box is in very small print whilst on the label it is large print. But the tube is sold in the box.

On Law:

40 No reports of precedent case available.
Current Ordinance is 1955 No. 11 relevant sections are:

In the High Court

No. 7

Proceedings
3rd February,
1972
(continued)

Sections 10 - English Equivalent is sec. 9 of Act 1938 Word "Colgate" is a name but has become "distinctive" to the products by reason of its being used in association with the product.

The mere fact that a man's name is on the register is indicative of long user.

In passing off Plaintiff has only to show in the looking of the goods is it calculated to deceive or confuse.

Deceive does not involve fraud or an intention to deceive nor has it to be shown that anyone was deceived.

10

We are not saying or having to say that Defendant intended to deceive. We say Defendant's packaging does tend to deceive or confuse North Cheshire & Manchester Brewy Co. v. Manchester Brewy 1899 A.C. 83

See Lord Chand's judgment at p. 88

Bourne v. Swan & Edgar 1903/1 Ch. 211 at 231, see Kierly 9th ed. p. 476/869/Clerk v. Addie 2 A.C. 431

20

Also Kierly p. 472 [865] Edge v. Nichollas 1911 A.C. 701 Kierly [866].

BREAK.

The Edge case is authority for the proposition that evidence may be given of the density of the business in relation to different classes of persons. The Plaintiff advertised his goods over a period of time.

Fact that name of a manufacturer is on the label is irrelevant. Lever v. Goodwick (1887) 36 Ch. 1 at p. 6, 7 & 8.

30

Plaintiffs' Evidence

No. 8

ERROL BRATHWAITE

No. 8

ERROL BRATHWAITE sworn states :

Errol Brathwaite Examination

I am the Deputy Registrar General. I

have records of trade marks registered in the country. I have the register of 1932. In that Register I have a trade mark of Colgate-Palmolive. It appears as No. 55 of 1932. I can't say if it is a register of a word or label or combination. Date of application is 20th October, 1932 and it was registered on that day. It is the registration of Colgate applied for by Colgate Palmolive Company Ltd.

Plaintiffs'
Evidence

—
No. 8

Errol
Brathwaite
Examination
(continued)

10

No. 9

No. 9

PROCEEDINGS

Proceedings
3rd February
1972

Mr. Wharton:- I tender the document.

Mr. Hosein:- I object.

Mr. De la Bastide.

The objection is

(a) that having regard to Plaintiff's pleading the evidence is not admissable. It has not been pleaded. Defence expressly admitted para 2 of the Statement of Claim.

20

It is suggested that the Particulars of para 3 permit the entry of this document. That paragraph could not have been intended to refer to this mark e.g. the Particulars there only go back to 1935 as Statement of Claim is 1970 but the mark here is 1932. Further this is a particular local mark. It could have been specifically referred to.

30

The trade marks relied on are those in para. 2. The pleader in his particulars is pleading generally a long user going back 35 years. So it admits of general evidence to that effect. No issue has been *fined on this. The purpose of this evidence Mr. Wharton said was to show change of script. What script they had in 1932 is irrelevant.

*[sic]

The case is analogous to pleading in general of loss of custom. In such instances you cannot give evidence of specific loss of custom.

They are distorting the proper boundaries of the pleading to squeeze in an after thought.

No. 9
Proceedings
3rd February
1972
(continued)

What the script was in 1932 has nothing to do with the case.

Mr. Wharton:

If the contest was as between the registration of 2 trade marks the Plaintiff would have to plead specifically the registration of a certain date.

This not such a case. Nor is it related in any way to the pleading of general loss of business.

The word "Colgate" has been used as a trade mark for upwards of 35 years.

10

That is a pleading of fact we are sure we have used that on a label for upwards of 35 years. So the fact

Court:

The document is admitted on the ground that it is evidence to support the plea of long user of the name "Colgate". It is marked Ex. B.B.1.

Mr. Wharton applies to have the witness bring from the Registry the original register of trade mark 811.

20

Mr. De la Bastide objects:

The nature of the amendment or the fact of consent in para 2 of the Statement of Claim of no importance. To use an admission that this is their trade.

Court has everything it needs to know about the case with the case. Now he is seeking to show that there has been a change of script. This is not a relevant purpose Plaintiff must now persuade the Court it is relevant.

30

It is not raised in the pleadings that a change of script is in any way a ground for challenging the Defendant's label.

Mr. Daly:

Pleading in para 2 puts the admission of 811. What part it plays in the case is a matter for the Court at end.

Can't ask now for what other purpose it

may eventually be used. It is admissible.

No. 9
Proceedings
3rd February
1972
(continued)

No. 10

Plaintiffs'
Evidence

ERROL BRATHWAITE

ERROL BRATHWAITE cont.

No. 10

I have certain other documents in my records including some relating to Colgate. I have an extract from the Register of 1963 No. 811. The book is being repaired.

Errol
Brathwaite
Examination
(continued)

Mr. Hosein Objects:

10 Court:

Having already heard the arguments in objection the Court admits the document. I admit it because:

- (a) like the first it is part of the continuous history of the use of the name "Colgate" as a trade mark of the Plaintiff;
- (b) it is a document specifically referred to in the pleadings to wit para 2 which has been admitted by the Court.
Produced as Ex. E.B.2.

20

Cross-examined by Hosein:

Cross-
examination

This is a certified copy of the registration of "Colgate" in Class 50 of the Register.

Date of application is 25th February, 1969. When registration is effected it relates back to the date when application is made.

Class 50 may be a residual Class.

Produced as Ex. E.B.3.

30

When application is made for registration the

Plaintiffs' Evidence

No. 10

Errol Brathwaite Cross-examination (continued)

Registrar General advertises in the Trinidad & Tobago Gazette. This is an issue of Gazette of 25th May, 1970 and at p. 523 there is an advertisement for application of registration of "Tringate" It states receipt of application was 22nd August, 1968.

Application is submitted to and received by my Department. Then it is advertised. I can't say if there were objections.

Gazette produced as Ex. E.B.4.

This letter is from my Department and shows that an application was also made by Defendants for detergent in class 47.

10

Produced as Ex. E.B.5.

when an application is made appropriate officer considers it and advertisement precedes the acceptance I would think.

Re-examination

Re-examination:

Registrar or appropriate officer looks at the application to ensure that certain things have been observed.

20

I have never heard of the Registrar or appropriate officer taking objection.

I do not function in the application of registration. I certify there has been a registration.

I don't know how an application is processed.

No. 11

George Gomez Examination 4th February, 1972

No. 11

GEORGE GOMEZ

GEORGE GOMEZ sworn states :

30

I live at 87 Cedar Avenue Bayshore and am Secretary of the 2nd Plaintiff Company.

I was employed in 1955 by the 1st Plaintiff and then from 1960 with the 2nd Plaintiff.

I have as Secretary access to the Company's records.

Plaintiffs'
Evidence

To my knowledge Colgate dental cream has been sold in Trinidad even previously to when I worked for the 1st Plaintiff, from the time I was a child.

—
No. 11

George Gomez
Examination
4th February,
1972
(continued)

I am now 40 years of age.

I met Colgate toothpaste when I was employed in 1955. It was sold in boxes in collapsible tubes.

10

Colour of box was red and the letters white.

I have a key ring given me for the 150th anniversary of the Company.

Company was founded by William Colgate in 1806. To my knowledge the Company has always borne the name Colgate. To my knowledge there has always been a Colgate on the Board of Directors. The present one is Mr. John Colgate.

20

Before 1955 Colgate was distributed in Trinidad through T. Geddes Grant who were agents.

Cross-examined by Mr. Hosein:

Cross-
examination

I use "Colgate".

Since 1955 it has been sold in an identical box to Ex. A.3.

Q. You have never had difficulty in identifying your product on shelves?

A. No.

Q. It is absolutely clear is it not?

A. Yes.

30

Q. It is a well established product in the local market?

A. Yes.

Q. You would know exactly what a Colgate box looked like even if you had not one before you?

A. Yes

Plaintiffs'
Evidence

Company has had the use of name Colgate for many years.

No. 11

George Gomez
Cross-
examination
4th February,
1972
(continued)

Q. It is so well established your Company has never contemplated changing the name?

A. No.

Q. 2nd Plaintiff incorporated when?

A. October 1st 1960.

Q. 2nd Plaintiff did not manufacture the toothpaste locally?

A. No.

Q. It imported it from Jamaica?

A. Yes.

Q. And have continued to do so ever since?

A. Yes.

Q. No change has been contemplated in the name or manufacturer since Independence?

A. No

Q. Reason for not changing the name is that to change it would be a disadvantage as the name is so well known?

A. Yes.

Re-examined:

Q. All sorts of people would know the name Colgate as referring to toothpaste made by your Company?

A. Yes.

Q. Has there been any change in the box?

A. Once sold as "Colgate Ribbon Dental Cream"

Q. Any other changes?

A. I don't recall any others.

27.

No. 12

JOAN ROCHARD

Plaintiffs'
Evidence

No. 12

Joan Rochard
Examination

JOAN ROCHARD:

Cassia Drive Petit Valley.

I am Secretary to the Marketing Manager
of 2nd Plaintiff.

Mr. N. K. Chin is the Marketing Manager

As Secretary I file the products and labels
concerning the Marketing Section.

10 I cut out Colgate-Palmolive advertisements
in the newspaper plus advertisements by competitors.
I have cut out ads relating to "Tringate" toothpaste.
When I cut them out I note on some part of the
clipping the date of the newspaper in which it
appeared.

These are ads I have cut out. They are seven
in number. The handwriting on them is mine. I
record the page and date and name of the newspaper.

(Produced as Ex. J.R.1.)

20 I record my Company's ads in the same way.
These clippings are kept as part of the Company's
records.

Cross-examined:

Cross-
examination

I go through each day's papers. I do it for
the two daily morning papers and the evening paper.
We don't take the "Bomb".

If the ad of our Company is on its own I cut
it out. Ads by Supermarkets are cut out by someone
else.

30 I have the records of those I cut out.

This last clipping in J.R.2. of "Tringate
Starch " does not appear to have a date. I can't
say from which paper it is taken.

These are all the advertisements I have cut out
relating to "Tringate" products.

I cut out all that I find.

Plaintiffs' Evidence

No. 12

Joan Rochard Cross-examination (continued)

I am a housewife.

I use starch at home. I buy it. I do my own shopping in the grocery.

I use Robin's spray starch.

I have not really observed "Tringate" starch on display in any supermarket or shop.

I am not interested in any other brand of starch but Robins.

I could not tell you if where I shop they can have Tringate starch on display.

10

The only two Tringate products I know as on the market are "starch" and "toothpaste".

I have not seen "Tringate" toothpaste in the grocery where I shop. I have not looked for it. It is possible that the grocery may stock it.

I use Colgate toothpaste always.

I was not aware apart from the advertisements that "Tringate" starch was being marketed.

Q. I suggest "Tringate" starch has been on the market since about beginning of 1967?

20

A. I can't confirm or deny it.

For about 1 1/2 years I have been cutting out advertisements. Yes since about middle of 1970.

The year is not noted on J.R.1(a). The year is not altered on any of them. But I would say they were all cut out in 1971. I am sort of really certain about that.

Now I see J.R.1 (g) is of the 8th anniversary of Independence that one must be 1970 I can't say all are 1970.

30

Q. Are they not all i.e. all except the starch ad are in fact in 1970?

A. It is possible.

Q. Likewise J.R.1 (f) is in 1970?

A. May be.

It is possible that I may have in my files other "Tringate" ads that I have cut out.

Plaintiffs'
Evidence

All Colgate ads are still in the files at my office.

—
No. 12

Joan Rochard
Cross-
examination
(continued)

Q. In J.R.1 (g) and J.R.1. (f) the name of the manufacturer of the product is permanently displayed?

A. Yes.

10 Q. And in J.R.1 (g) the name of the agent is permanently displayed?

A. Yes.

My Company has nothing to do with Jemimi Garments and Trading Company.

I started my work as Secretary on 3rd February, 1970 I started cutting out advertisements about middle of 1970. I didn't know if before I started to do so, someone else had been cutting them out.

Q. Have you seen earlier ads in the files?

20 A. Yes we have clippings of "Colgate" going back before I started to cut. I have not seen earlier ads of competitive products.

As far as I am aware cutting of any competitive products is not a new practice the Company instituted when they gave me instructions to do so.

Q. Colgate toothpaste box is very distinctive?

A. Yes.

I would say the red in the Colgate box is blood red but more bright.

30 Q. It is a box easy to pick out?

A. Yes.

Q. And easy to remember?

A. Yes.

Re-examination; to Mr. Wharton:

Re-examination

As far back as I can remember I have always

Plaintiffs' Evidence

used "Colgate". It has always been in my childhood and married life.

No.12

Joan Rochard
Re-examination
(continued)

There may be other clippings relating to Tringate. Toothpaste clippings are not the only ones. I cut out displays relating to bleaches, detergents, shampoos, hair preparations, soap.

I joined the firm as Secretary to the Marketing Manager.

Cross-examination

Further crossed-examination:

My Company does not make or sell starch.

10

No Re-examination:

No. 13

Lorellin
Stephens
Examination

No. 13

LORELLIN STEPHENS

LORELLIN STEPHENS:

3 Midemy Rd. Valsayn Park North.

I am Marketing Research Supervisor of 2nd Plaintiff since 1968. I have been with the Company since 1960. I was in 1960 a stenographer in the advertising department then after that a series of positions in the marketing department.

20

As Market Research Supervisor I am employed to conduct market research interview, conduct interviews in homes and any kind of market research study required by the Company.

I research both our products and those of our competitors. This includes Colgate toothpaste as that is one of our main products.

To conduct a survey of the most frequent type of toothpaste used a check called a "pantry check" which entails going into homes and into factories to see what the householder is using and has in stock is carried out.

30

We go to a total of 800 homes. Previously

in 1971 we went only to 500. The survey is due twice a year. The surveys are a regular feature of my work.

Plaintiffs'
Evidence

The 800 homes are from all socio-economic groupings. I accompany the girls at certain times, and re-check behind them.

—
No. 13

Lorellin
Stephens
Examination
(continued)

The girls are employed by 2nd Plaintiff and supervised by me.

10 The information collected by survey is computed by me to determine the in-home incident of the product and our share of the market.

The interviewer uses our form and makes the necessary notation depending on what she uses.

The surveys are conducted island wide Urban and Rural.

20 For each brand mentioned you give a point. I write it down myself. Then I give it to be typed in stencil. I check that. I then destroy my type-written form and have the stencil rolled off.

These documents I have are run offs. Mr. Hosein objects to production of documents.

Report is based on hearsay. Hearsay of her employees or hearsay of the housewife.

Mr. Daly:

Surveys are a regular feature of the Plaintiff. Witness is in charge of the survey. Survey conducted by witness and other girls.

Court:

30 The evidence is not hearsay. It is admissible as it is information gathered by a chain of employees of the Plaintiff Company.

Produced as Ex. L.S. 1-5.

I am looking at L.S.5 dated December, 1970.

Under the column "Brand Share". The letters A. & B. C. D. & E. refer to the socio-economic groupings i.e. type of homes. On some docs. we stop at D. as the E. houses were so poor they could not

Plaintiffs'
Evidence

—
No. 13

Lorellin
Stephens
Examination
(continued)

afford to buy toothpaste.

- A. house is like a Bank Manager's.
- B. house is one where husband and wife work. Some combined incomes of husband and wife might match the A.
- C. is like a store clerk at say Johnson's.
- D. is a domestic or porter.
- E. is Shanty Town.

C.D.C. stands for "Colgate Dental Cream".
"Brand" shows total number of toothpaste distributed over various homes.

10

We record also the previous Brand Shares. The percentage figure opposite correspond to the percentage figures taken under Brand Share.

Under "Incidence" we show under each class percentage of people that had toothpaste.

"National" means Trinidad.

"Rural" is Sangre Grande, Arima, Princes Town.

"City" is both San Fernando and Port of Spain.

20

Cross-
examination

Cross-examined by Mr. Hosein:

I started "pantry check" survey for 2nd Plaintiff in 1960. I went then to another department. I resumed survey in 1968 though I may have done it between 1960-68 but it was not then my job.

I did most of the work on the preparation of the questionnaire in consultation with the Marketing or General Manager. Up to the end of 1970 surveys were based on 500 homes.

We employ a maximum of 4.5 interviews per 500 home survey. We do a random sample of homes. We go to the area and the girl is put in the street where she can find that type of home.

30

I can get a specimen form of the questionnaire.

A questionnaire is recorded answers to

questions as well as what the interviewer sees on the premises. A girl may be given 75 - 100 homes or perhaps more.

Out of the 500 I would personally visit about 80% at random.

By "at random" I mean a "guesstimate".

I visit as many as that to verify that the information is correct. In addition I interview some of the homes myself.

10 A survey will last about 6 working days.

The interviewers are employed on a temporary basis. They are housewives with working experience. They are not illiterate people.

Survey is directed only to determine market strategy and the impact our product has on the market.

The number of competitors we list on the form are 9 plus small firms we group under "Others".

20 I could not give you the brands under "Others" for each of these forms.

We don't have the actual questionnaire used. We have the model on which questionnaires were based.

Out of the 500 houses I guess I would take about 150. I would say 150 is an average. There are no records to prove it. I keep no check on myself.

We all go together in one car. We do one area together and then move to another.

I would say we visit about 100 houses in one day.

30 Each person takes 20 - 25. I would do about 20 myself. In addition I do spot-checks. The spot-checking takes up most of my day. I will spot-check 50 - 60. That too is a guesstimate.

If we go to Woodbrooke and a girl has 5 houses; before she has done the 5 I visit her and meet her in the street or in the home. I take the form she has completed and look to see that all the questions are answered. I go back at random to 2 - 3 of the houses. I identify myself to the housewife and do the whole interview over again with the housewife.

Plaintiffs'
Evidence

—
No. 13

Lorellin
Stephens
Cross-
examination
(continued)

Plaintiffs'
Evidence

—
No.13

Lorellin
Stephens
Cross-
examination
(continued)

I spot-check each area. I would say I spot-check 2 or 3 out of my 5 done by each interviewer.

It would take me too long to do all interviews.

I do not check all the work that is done.

Between 1968-70 amongst "Other brands" I remember "Tringate". There would also be brands from overseas.

We seldom found "Tringate". It was not a serious competitor.

10

I can't tell you in how many homes out of 500 we found "Tringate". Perhaps 3 or 4.

"Colgate" is well established in the local market. It is found in all types of homes with other brands.

Q. You recall seeing it where you found "Tringate"?

A. I honestly can't answer that. I can't remember. I have seen Colgate with other brands.

Q. Can you say that any trend indicated by these forms was affected by the appearance of "Tringate"?

20

A. "Tringate" is not shown here. It is difficult to say whether the documents show any trend affected by the appearance of "Tringate".

I can say when my share has gone up or down.

Q. Can you say when "Tringate" appeared on the market?

A. No.

We did no study to determine the effect of "Tringate" on our product.

30

In the document it can't be seen what effect "Tringate" had

Q. Are not consumers of your product very familiar with your package?

A. Yes.

Q. Impossible to forget?

Plaintiffs' Evidence

A. I would not expect people to be mistaken about the box but they could be.

No. 13

The "National" column is the data of the whole country and so will reflect the national trend. The trend shown from May 1968 - December 1970 is:

Lorellin Stephens Cross-examination (continued)

Our trade in May 68 - 75.5% share of the market

10

Nov.68 - 79.6%	"	"	"	"
May 69 - 79.2%	"	"	"	"
Nov.69 - 75%	"	"	"	"
Jan.70 - 76%	"	"	"	"
Dec.70 - 74.6%	"	"	"	"

From May '69 there has been a gradual decline.

Q. Suggest "Tringate" was on the market first early in 1970?

A. I think it was before. I can't argue with you.

I think it was '68 or '69. I would say late '68.

20

That is a guesstimate.

Q. It went off the market in September, 1970?

A. I don't know.

When I did the survey in December, 1970 I would not be in a position to say if it was on the market. I don't have the records.

Between June - December, '70 other brands increased 1.651%.

Between November, '69 - June, 1970 other brands declined from 2.75% to 1.6%

30

We did research in other products I don't recall seeing any other "Tringate" product. We did not research starch.

Plaintiffs'
Evidence

No. 13

Lorellin
Stephens
Re-examina-
tion

Re-examination:

Branch share of the City in May '68 was	73.9%
Nov. '68 "	71.6%
May '69 "	75.4%
Nov. '69 "	67.4%
June '70 "	72.6%
Dec. '70 "	71.8%

These show a decline of our City share from May, '69 but not a general decline.

Mr. Wharton in the absence of the witness.

10

I request leave to ask witness how she identified herself to the housewife as she in fact did not identify herself as a Colgate person.

Mr. De la Bastide:

That is irrelevant as the witness calculation is based on what she and her girls saw. Admittedly they ask questions but that has not been put in evidence.

Mr. Wharton's request refused by Court.

20

Witness to bring a Questionnaire model form and information when Tringate came on and left the market.

No. 14

Gordon Reece
Examination

No. 14

GORDON REECE

GORDON REECE sworn states in examination in chief to Mr. Wharton

I live at 113 Cascade Road, St. Ann's.

I am employed by Colgate Palmolive (Trinidad) as Resident Supervisor.

30

I have a Bachelor of Science for University of the West Indies specialising in Industrial Management.

Plaintiffs'
Evidence

—
No. 14

First employed by 2nd Plaintiff in August, 1968. I was then employed as a marketing trainee. Next post was Branch Manager then Export Supervisor and then Resident Supervisor (B/oos) and in June, 71 Resident Supervisor in Trinidad.

Gordon Reece
Examination
(continued)

As Resident Supervisor I have:

- 10 (1) Charge of marketing department;
(2) Charge of administration department.

I would have access to Company records. All the financial records pertinent to the brands department and the work of the members of the department.

They report to me, so does the Sales Department.

20 Company sells a variety of goods we don't manufacture. We have contracts for manufacture. We sell toothpaste.

The word "Colgate" on A is in white script on red background. The script we had when we took from England was a black script. Now we take from Jamaica which follows the United States of America. We have this different script.

I say this script is distinctive to Colgate.

30 I have seen other brands of toothpaste. I heard of a brand "Tringate" which has this script. I know of no other brand of toothpaste which has this script.

No. 15

PROCEEDINGS

Mr. Hosein:

We are only concerned with "Tringate" and Colgate.

No. 15

Proceedings
4th February,
1972

No. 15

Proceedings
4th February
1972
(continued)

Mr. Wharton:

I desire to show that the only other brand the witness has come across with similar script is Tringate.

9th ed Kierly p. 469 [858] Sec. 49 of English Act.

This is a Passing off point that Colgate has used this script. No other manufacturer but Tringate had done so.

Any aspect of the uses of the trade is admissible in evidence. So Court may consider any feature in the matter of the passing off.

10

Sec. 58 of Local Ordinance 1955 No. 11. I submit evidence is admissible.

Mr. Hosein:

Test in a passing off action is that of a reasonable person. Is he likely to be confused.

Sec. 58 is a section dealing with an infringement action hence the word relevant in the statute.

20

Mr. Wharton:

Kierly 366 - 367 [718].

No. 16

Ruling
7th February
1972

No. 16

RULINGRULING BY COURT

The Plaintiffs seek to put in as evidence toothpaste tubes and packages manufactured or sold by persons other than themselves or the Defendant. The purpose of this evidence, is, it is said, to show that the only other brand sold in which a script similar to that of the Plaintiff's is used is the Defendant's brand. It is contended that the evidence is admissible as in a passing-off action every aspect of the usages of the particular trade may be considered

30

by the Court. Prayed in aid of this contention is section 58 of the Trade Marks Ordinance 1955 No. 11 of which the English equivalent is section 49 of the Trade Marks Act, 1938 (1 & 2 Geo. 6 c. 22).

No. 16

Ruling
7th February
1972
(continued)

10 The Defendant on the other hand objects to the admission of this evidence on the ground that as the test in a passing off action is the likelihood that a reasonable man may be deceived or confused, the evidence should be confined to the packages of the Plaintiffs and the Defendant. The packages which the Plaintiffs seek to admit are thus classified by the Defendant as irrelevant to this action. In so far as the application of section 58 of the Ordinance is concerned, the Defendant submits that it is a section that relates to an action of infringement.

20 In my view section 58 is not to be as narrowly confined as Counsel for the defence has suggested. As I understand what the authorities describe as the Rules for Comparison the same rules are applicable to actions of infringement or passing off or to registration disputes but may be applied differently. Thus at p.p. 447 - 448 of the 9th edition of Kerly's "Law of Trade Marks and Trade Names" the learned author writes:

30 "Questions whether there is or is not a deceptive resemblance between two marks, or a mark and a 'get - up' of goods, or the get-up of the goods of two different traders, arise in several different proceedings which form the subject of different chapters in this book. As most of the general considerations applicable in deciding such questions are common to all these proceedings, it has been thought to be convenient to make the question of deceptive resemblance the subject of a separate chapter.

40 There are however, differences in the way the rules governing this matter must be applied in the different proceedings Allowing for these differences, the rules for comparison, in so far as there are rules for comparison, are necessarily in some degree always the same. But each case depends on its particular facts as established by the evidence, so that the value of authorities lies not so much in the actual decision as in the test applied by the tribunal".

No. 16
Ruling
7th February
1972
(continued)

In this case a feature alleged by the Plaintiffs as likely to deceive or confuse is the similarity of the script used by the parties to print the respective names of "Colgate" and "Tringate" on their packages and tubes. That undoubtedly to my mind is a factor I must take into account in deciding this action It has not however been shown by the Plaintiffs that they have any proprietary right to this script. Indeed the evidence is that "Colgate" manufactured in the United Kingdom is printed in what has been described as block script whilst the same word on the like articles manufactured in the United States of America, Canada and Jamaica is printed in a different script. In consequence as at one time "Colgate" toothpaste sold on this market came from the United Kingdom but now comes from Jamaica the market here has over the years been supplied with Colgate toothpaste in packages and tubes carrying the name "Colgate" in different scripts.

10

20

In drawing attention to the different scripts that have been used on packages of Colgate depending on their source I am not saying that the Defendant by using, as alleged, a like script for its product is not passing off its product as that of the Plaintiff's. The different scripts used by Colgate, serves however to illustrate, I think, that what script a trader selects for his products is a matter of his choice. The fact that traders other than the Plaintiffs and the Defendant should choose a script dissimilar to that of the Plaintiffs is not, to my mind, a relevant consideration in as much as no proprietary right to the script has been shown to exist in the Plaintiffs. Further, as the choice of script is freely open to each trader I cannot, I think, regard facts which establish that traders other than the Plaintiffs and the Defendants have chosen scripts differing from that of the Plaintiffs as evidence of a trade usage.

30

40

To my mind therefore the evidence which the Plaintiffs seek to introduce is both irrelevant and prejudicial and accordingly I rule that it be excluded. That ruling is subject to this, that if by evidence the Plaintiffs can establish a proprietary right to this script then, as presently advised, it appears to me that the evidence would become admissible.

Signed by
D.E.G. Malone - Judge.

50

GORDON REECE

No. 17

GORDON REECE re-sworn cont. in examination in chief:Gordon Reece
Examination
(continued)

I am concerned with trade distribution etc.

I have records showing the sales position of my product and they show the advertising position.

10 The records are sales ledgers. We have a performance sheet in which we compare the budget performance with the sales. The performance sheet is a summary of the sales and advertising ledgers. I have not that sheet here. I have a sheet of sales and advertising figures for Colgate dental cream for 1955-70. The Branch Manager is responsible for those figures. I instructed him to prepare them for his records and I checked this against the product performance sheets. The ledger sheets would, if necessary, be available.

This is what I checked.

20 Produced as Ex. G.R.1.

The document shows sales for 1955 in relation to different size boxes ranging from "Super". They are in dozens.

There is also an overall figure (conv) and is the sales of all different packages corrected to sales of the standard size.

We have not the box sales prior to 58 and the converted figure is only put in from 67. "Supers" were not sold before 68.

30 Under "Advertisements" the "Media" means advertising through, radio, television, cinema and the press. "Pra" is where e.g. there is a price cut or a give away, "Oth" is the cost of display material, production charges etc.

Total sales (conv) in 70 was 326794.

I kept records of our press and television advertising.

No. 18
Proceedings
7th February,
1972

No. 18

PROCEEDINGS

Mr De la Bastide:

How can details of the Plaintiff's advertising be relevant.

Mr. Wharton:

The purpose of the evidence is to show similarity in advertising.

Mr. Hosein:

If so this should have been pleaded. But they are relying on the get-up of the boxes and tubes. Not the advertisement. If they are objecting to advertising then they should plead so. The pleadings do not admit of this evidence. We are being taken by surprise.

10

Mr. Wharton:

It is not necessary to plead every fact.

Question is not only whether the Defendant's product will be taken to be the Plaintiff's but the tendency is to make it so appear. So we have not to plead advertising but by evidence can show that the advertising technique supports the main contention.

20

In addition we have widely advertised so why can we not show how we advertised it.

38 Halsbury [1040]

Annual Practice 1966 p. 393 "Passing off Actions".

No. 19
Ruling

No. 19

RULING

30

RULING BY COURT.

A passing off action founded on the mere

10 allegation that the Defendant's system of advertising is similar to the Plaintiffs will not succeed. But when the allegation is as here that the Defendant is selling goods in a get-up similar to that of the Plaintiffs then it would seem to me that evidence that the Defendant's system of advertisement of those goods is similar to that of the Plaintiffs is admissible in proof of the central issue that the similarity in the get-up of the goods is likely to deceive or confuse the reasonable man.

In this case the Plaintiffs have pleaded that they have widely advertised their goods. Evidence of the nature and extent of such advertisement it seems to me may then be given by the Plaintiffs. Particulars of that might have been sought by the Defendant. The fact that they were not does not however exclude the Plaintiffs from giving the evidence.

20 It therefore seems to me that the evidence is on general principle admissible and that there is sufficient in the pleading to permit of it being admitted.

Signed by D.E.G. Malone,
Judge.

No. 20

GORDON REECE

Plaintiffs'
Evidence

No. 20

Gordon Reece
Cross-
examination
(continued)

Mr. Hosein:

Objects unless the advert is original.

30 These cards are copies of the art work which is sent to the press. They are photographs of the art work before it is forwarded to the press. The advertisements have actually appeared in the newspaper.

Our advertising department keeps these cards which are photographed before the art work is sent to the press.

Mr. Wharton:

We are only the advertising agent.

Plaintiffs'
Evidence

—
No. 20

Gordon Reece
Cross-
examination
(continued)

Cross-
examination

Mr. De la Bastide:

We object to the witness giving evidence of the advertisement appearing in the press as that is evidence of the doc. Further they claim to have the advertisements themselves from the newspapers.

Court upholds this objection.

CROSS-EXAMINED by Mr. De la Bastide:

I am not sure that U.K. "Colgate" packages are still packed in different lettering to U.K. At one time it was and was so sold in Trinidad. 10

There would have been a spell when English packages were on sale on the market in Trinidad together with Jamaica origin packages.

English box was in the same red colour with the same white lettering. Any where in the world they will be red with white lettering but the style of lettering may vary.

Q. What is distinctive of your product throughout the world is the red background with the white lettering? 20

A. Yes.

Q. The whole colour scheme of Tringate is markedly different to the Colgate?

A. They are different.

Q. Markedly so?

A. Yes.

As far as I know there was no confusion when Colgate here changed from English lettering to Jamaican. 30

My Company has not exclusive right to the present Jamaican script.

I have not seen an elongated "C" like the "C" in "Colgate".

Q. Are you aware that the "C" in your box is markedly different from the "C" in your registered trade mark?

A. I am not aware it is.

Q. Look at it.

A. Yes it is.

The "O" is not unique. The same applies to every other letter. It is a modern type of lettering.

Q. Change from old capital writing to this script is a fairly general modern trend?

A. I disagree.

10 I am accustomed to seeing this type of "g" only on a Colgate package.

Q. Is it distinctive?

A. I think so.

Q. What is distinctive about it?

A. It is elongated to fit in with the rest of the script.

The tail comes right back until it is in line with the first part of the "g". Nothing else.

20 I have never seen a "g" like that on any product apart from "Tringate".

Q. I look at the "g" in "Signal". Is it the same size as the rest of the script?

A. Yes.

Q. Does the tail go back in the same way?

A. No and the tail of the "g" in "Signal" is different to the tail of the "g" in Colgate.

I agree that the tail of the "g" in "Tringate" is the same as the tail of "g" in "Signal" and so different from "Colgate".

30 ("Signal" box tendered as Ex. G.R.2)

Q. Look at the lay of the "g" in Colgate and Tringate. I suggest they are markedly different?

Plaintiffs'
Evidence

—
No.20

Gordon Reece
Cross-
examination
(continued)

Plaintiffs'
Evidence

—
No.20

Gordon Reece
Cross-
examination
(continued)

A. Different but not markedly so.

I have not seen an "a" like the "a" in Colgate on other products.

I can't recall seeing it in advertisements for products. I don't agree on "a" is frequently made this way.

I would not say there is anything special about the "t".

Q. Don't you agree that there is a difference in the "t" of Tringate and Colgate?

10

A. There is a difference in that the cross bar of the "t" is different. The cross bar of the "t" of "Tringate" is a good deal shorter.

I was aware of an action that was filed.

Q. It was filed on 24th March, 1970?

A. No.

Q. Are you aware an application for an interim injunction was made by your Company before trial?

20

A. Yes. But I didn't know the date.

Q. Suggest it was 7th July, 1970?

A. I'll accept that.

Q, Your Company is powerful financially.

A. It makes a profit every year.

Q. Your Company threatened 3rd parties distributing "Tringate" with action if they did not cease to do so?

A. I am so aware.

30

Q. Did you participate in that decision?

A. No Sir.

Q. Were you aware that step was taken before application was made for the injunction in this case?

A. No.

Q. Is this the circular letter sent out by your Company?

A. Yes.

Q. Date?

A. 17th June, 1970.

(Letter produced as Ex. 6 R. 3)

10 I didn't know that my Company had brought an action against Ramkerrysing for a toothpaste called "Diamond". I know an action which was brought against him for toothpaste called "Colden Gate". I think the objection was the lettering and the use of the word "gate".

Q. Suggest the action related also to "Diamond" toothpaste?

A. First I have heard of that.

Q. You brought an action against "Triangle"?

20 A. Yes. It was before my time. I don't know what was the allegation alleged by my Company. I have never seen this box before.

Q. Would you object to this being marketed?

A. No.

Q. Have you seen that before?

A. No.

Q. Would you object to that being marketed?

A. I might object because the script might be similar to the English Script.

30 This is the old English lettering. Showing an English type box it was for a Hong Kong Newspapers "The Morning Post", of 25th May, 1963.

(Produced as Ex. G.R.4)

Produced is the "Diamond box" Ex. G.R.5.

Plaintiffs' Evidence

—
No. 20

Gordon Reece
Cross-
examination
(continued)

8th February,
1972.

Plaintiffs'
Evidence

—
No. 20

Gordon Reece
Cross-
examination
(continued)

Produced is the "Triangle" box Ex.G.R.6.

Now I see Ex. G.R. 4 I have no objection to the
"Triangle" lettering.

I object however to "Golden Gate" both
because of the type of script and the lettering.

"Golden Gate" box produced as Ex. G.R.7.

I heard of the Company called "Tollgate".

They do not sell anything competitive to us.
I think they sell cosmetics.

I don't know that cosmetics are registered
on the same class as toothpaste.

10

Q. An important feature of your box is the
reference to "Gardol".

A. Yes.

Q. Up to 1960 "Gardol" was treated by your
Company as an essential feature of its
registration?

See E.B.2.

A. Yes.

Q. There is no "Gardol" in Tringate?

20

A. That is so.

Q. An action was instituted by your
Company against Ramkerrysing for
passing off in respect of "Diamond"
"Tringate" and "Golden Gate"?

A. I can't confirm or deny that.

I knew the "Buy Local" function held in 1970.
I did not attend nor did my Company participate.
I knew that Mr. Pattron participated.

9 Q. He had a float which depicted the
"gateway" to good products?

30

A. I don't know.

I would say there was 6 - 7 kinds of tooth-
paste on this market. I would say 3 - 4 are of

significance. They are Colgate, Pepsodent, Crest and Ultrabrite. Of less significance are Lysterine, Kolynos, Fordhams. There might be yet others which my Company would regard as trivial.

Plaintiffs'
Evidence

—
No.20

Q. It is in that last category that "Tringate" fell?

Gordon Reece
Cross-
examination
(continued)

A. Yes. It is trivial from the point of view ranks.

10 I have some sort of expertise in figures. G.R.1 shows our sales and advertisements by the year and so shows that we sell substantial quantities of our product and that the public is so aware.

My employment with "Colgate" is my first since University.

Q. Are you aware of the practice in your Company of cutting out advertisements of both yourself and competitors?

A. Yes. It was instituted, discontinued and re-instituted.

20 I am not sure the practice was in force in 1968. Might have been I know the practice obtains at the moment and has been the practice for some time.

This is a letter of 11th August, 1967 from your Company's solicitors to Mr. Ramkerrysingh.

(Produced as Ex. G.R.8)

Q. You would not agree then until the statement in the letter that "Diamond" and "Triangle" packages are an "obvious copy"?

30 A. I would not agree with it in relation to "Diamond" or "Triangle".

Re-examination:

Re-examination

Q. Who was Ramkerrysingh?

A. I believe he sold "Diamond" "Triangle" and "Golden Gate" from a van.

Q. Were any or all of the products withdrawn from the market?

A. I believe that all three were withdrawn.

Plaintiffs'
Evidence

—
No.20

Gordon Reece
Re-examination
(continued)

Q. Do you know who manufactured "Golden Gate"?

A. "Daily Need Chemicals" of Hong Kong.

Q. Of "Triangle"?

A. I don't know.

Q. "Diamond"?

A. Don't know.

Up to 1967 English pattern used here.
Ex. E.B. 2 shows the old English Lettering.

"Diamond" like "Golden Gate" is white on a red back-ground but not same lettering. So too "Triangle".

10

I was shown G.R.2. It is in a package of white and blue with some red. The word "Signal" is blue against a white background.

Q. What of the "l" in "Signal" (G.R.2) compared to "Colgate"?

A. They appear to be similar the "a" is completely different.

G.L.4 does not state the person against whom the Company proposes to take action.

20

Cross-
examination

With leave of Court: Mr. Hosein in cross-examination:

Q. Do you know that there is a negative list against toothpaste?

A. Not to my knowledge. I don't know why "Diamond" "Triangle" and "Golden Gate" were withdrawn as I was not with the Company.

No Re-examination:

30

51.

No. 21

LORELLIN STEPHENS (RECALLED)

Lorellin Stephens recalled for Mr. Hosein sworn
states in cross-examination :

10 I have the questionnaire you asked for.
This is an original, with answers of a pantry
survey. The person interviewed was in Diego
Martin. I did not interview her. Oral questions
are asked and the interviewer makes an appropriate
mark.

I have a letter from our Marketing people to
Venezuela dated 23rd June, 1970. "Tringate"
appeared 2 - 3 months before the letter. The
letter says so and that is how I know it then
appeared.

Questionnaire produced Ex. L.S.6.

Re-examination:

Name on L.S.6 is names of persons interviewed.

Plaintiffs'
Evidence

No. 21

Lorellin
Stephens
(recalled)
Cross-
examination

Re-examination

No. 22

LLOYD AYOUNG

Lloyd Ayoung sworn states:

I live in Primrose Avenue, Cascade.

I am Secretary of T. Geddes Grant Ltd. I have
access to the Company records. I joined the Company
in July, 1947. I was then selling in the Depart-
ment. Then transferred to Accounts Department as
Assistant Accountant.

30 In that time Geddes Grant had the agency of
Colgate Palmolive products including toothpaste.
Agreement was terminated in 1953. In 45 years
before that the Company had the agency.

I have the "Colgate" box. I know it was sold
in a carton with a tube. In a package similar to A.

No. 22

Lloyd Ayoung
Examination

Plaintiffs'
Evidence

—
No. 22

Lloyd Ayong
Cross-examina-
tion

Cross-examined by Mr. Hosein:

I was concerned with the agency in checking the invoice etc.

Sometimes, but very seldom, I would handle the product.

I always associate "Colgate" with a red box and white lettering. When I think of Colgate I think of that.

No Re-examination:

No. 23

Riccardo
Hernandez
Examination

No. 23

RICCARDO HERNANDEZ

Riccardo Hernandez sworn states:

I live at 1 Strathelide Avenue, Cascade.

I am the Managing Director of Norman Grey & Company an advertising agency. I joined it in 1963 and have held my present position for about 2 years.

Before that I worked in various capacities in newspapers. Eventually became Editor of "Sunday Mirror" I was then indirectly involved in advertising.

Colgate has been a client of my Company before I joined it in 1965. My Company advertises Colgate in different media. I kept records of the advertisements we put in the press. We keep them in a "Guard Book" I have the book with me. This book has advertisements from 1964 to now. This book basically concerns "Colgate".

Mr. Hosein objects for the reasons already given; Objection overruled by Court.

1st advertisement 25th October, 1965 (Sunday Mirror)

2nd advertisement 21st June, 1965 (Guardian)

3rd advertisement 15th Nov.1964 (Sunday Mirror)

10

20

30

4th advertisement 11th Nov.1964 - 26th Nov. '64 (Guardian)

Plaintiffs' Evidence

5th advertisement 15th Nov. 1964

No. 23

6th advertisement 21st June, 1965 (Daily Mirror)

Riccardo Hernandez Examination (continued)

7th advertisement 24th September, 1967 (Express)

8th advertisement 24th September, 1967 - 3rd Oct. 1969 (Express)

10 9th advertisement 12th July, 1969 - 27th July, 1969 (Express)

10th advertisement 4th July, 1967 - 2nd October, 1969 (Express)

11th advertisement 25th May, 1969 - 26th July, 1969 (Express)

Produced as Ex. R.H.1.

I also follow the progress of products I do not advertise.

20 Part of function of advertisement is to tell the public a message of the product.

I have seen products with the prefix "Trin".

Q. To what types of goods does the use of the word "Trin" relate.

Mr. Hosein objects:

No. 24

No. 24

PROCEEDINGS

Proceedings 8th February 1972

It is irrelevant to any issue in the case which is breach of the Plaintiff's trade mark and passing off.

30 Issue is raised in the Particulars under para 7.

It is not competent for the Plaintiff to rely

No. 24
 Proceedings
 8th February,
 1972
 (continued)

upon every system which involves use of the word "Trin" in other contexts. That it would fall into evidence of similar facts and that sort of evidence is objectionable.

If this evidence is to be relied upon he must plead system.

Mr. Daly:

In a case like this you can look at the word "Colgate" in whole or in its two parts.

Calculation to deceive goes to the heart of the matter Kierly paras 865, 866 & 867. 10

Seixo c Probe zende (1866) L.R.1 Ch.692.

Does the word "Trin" have any particular value ?

See Parker at para (837) of Kierly. You must consider the sound and look of the words.

See para 501 of Phipson's 10th edition

How do you make a local product show it is a local product by use of "Trin".

De la Bastide in reply:

10

We must confine ourselves to the usages of the trade.

The evidence of the advertising manager is speculative.

Further if you are going outside the usages of the trade you must plead it.

Para 502 of 10th ed. Phipson.

If our state of mind is in issue the similar facts of what I have done are admissible (506)

No. 25
 Ruling

No. 25

20

RULING

The evidence sought to be admitted is to my mind inadmissible. I exclude it upon two grounds:

1. Its lack of probative value; and because
2. it is merely similar fact evidence that has no specific connection with the facts in issue.

No. 25
Ruling
(continued)

10 The determination of the meaning of a word and whether a word is or is not used in its ordinary meaning is a question of fact. Evidence may be led to show that in a particular trade for example a word has acquired a specialised meaning. In this instance what the Plaintiffs are seeking to do is to show that the word "Trin" is an abbreviated form of "Trinidad" and further (and this to me is the major objection to the admissibility of the evidence) that when used to form part of a brand name means not only "Trinidad" but "made in Trinidad". That is to be shown by the evidence of the witness who is not engaged in the trade with which this case is concerned but is an advertising agent for various companies.

20 To admit such evidence would be to allow the witness, as I see it, to introduce what may genuinely be his beliefs as to the reason for traders in this country, whether traders in toothpaste or otherwise, making use of the word "Trin" in their brand names. Such evidence I consider to be speculative and of no probative value.

30 Further, evidence that use is made of the word by manufacturers engaged in trades other than the trade in this case heightens the speculative nature of the evidence, and results in the introduction of mere similar fact evidence of the acts of others not engaged in the trade in question. It is not evidence of the acts of the Defendant or of others engaged in his trade and so similarly circumstanced to the Defendant as to show that the Defendant has acted in the manner that those others may have done. Consequently to my mind the evidence would have no specific connection with the facts in issue.

40

If as I earlier said in the course of the arguments there was evidence of a directive by Government for example that the word "Trin" was to be used by all manufacturers engaged in the particular trade to publicise the manufacturing capabilities of the country, the position might well be different. There then would be evidence that the word was associated in the sense for which

No. 26
Ruling
(continued)

the Plaintiffs contend with these particular products or products of all kinds manufactured here. That to my mind however is evidence of a very different probative value to evidence that certain manufacturers whether engaged in this trade or not to the belief of the witness make use of that word for that purpose.

Signed by

D.E.G. MALONE,

JUDGE.

10

Plaintiffs'
Evidence

No. 26

RICCARDO HERNANDEZ

No. 26

Riccardo
Hernandez
Examination

RICCARDO HERNANDEZ RE-SWORN CONTINUES IN
EXAMINATION IN CHIEF:

By saying I follow the products of persons for whom I do not advertise I mean of persons who are competitors of one's client.

I sometimes advise my clients on the form of their advertisements. I sometimes make up ads for them

20

I have met before the word "Tringate".

Q. When you first came across that word did it signify anything to you?

A. Yes.

Q. What?

A. That there was a manufacturer of tooth-paste in Trinidad and that his product was called "Tringate".

Mr. Wharton:

Asks that the certificate which his witness would have produced but are rejected by the Court's ruling be put in for identification.

30

They are marked X1 - 6 for identification.

I have bought consumer goods with "Trin" in the brand name as prefix.

Plaintiffs' Evidence

Q. What did you buy?

No. 26

Objection to the question. Not pressed by Plaintiff.

Riccardo Hernandez Examination (continued)

No cross-examination:

Plaintiff closes his case.

No. 27

No. 27

PROCEEDINGS

Proceedings 8th February 1972

10 Mr. T. Hosein:

Defence is not calling any witnesses.

Mr. T. Hosein's Address:

9th February, 1972

1st Plaintiff alleges that its trade marks are infringed and the Defendant has passed off its goods.

No burden on the Defendant. The burden of proof is on the Plaintiff.

20 By virtue of registration the Plaintiff is entitled to exclusive use of the mark. Anyone using a mark identical or so closely similar as to be likely to deceive or confuse commits an infringement. Sec. 5 of 1955 No. 11.

3rd ed. Hals. vol. 38 p.566 [944] at p.567. What are the essential features of the Plaintiff's trade marks? Ex. E. & F.

Prior to 1963 under the 1932 E.B.1 registration essential features were "Colgate" distinctive design.

30 Then in 1963 under E.B.2 essential features are "Colgate" red & white and its distinctive design.

In view of para 3 of the Statement of Claim the greatest emphasis is placed by Plaintiff on

No. 27
 Proceedings
 9th February,
 1972
 (continued)

the name "Colgate" and white lettering against a red background.

Mr. Reece admits no exclusive right of user to the script. So distinctive features are:

- (a) The name "Colgate"
- (b) Its layout; &
- (c) Having white against a red background.

N.B. "Dental Cream with Gardol" is printed definitely on F. there on the package.

The script has no relevance so far as the claim for infringement is concerned. That is common ground I think. Plaintiff itself has deviated from time to time in its script N.B. as above Ex. F. & the package.

10

So Court must confuse the Defendant's label with the Plaintiff's bearing in mind the essential features.

Hals p. 569 [948]

Halsbury [984] [985] [986] [987]

So Court should look at the two boxes and consider whether the totality of the impression to eye and ear is likely to cause deception or confusion.

20

Hals [992]

Cope v. Evans (1874) 18 Eq. 138 at pp 149 - 151
 Court must be satisfied that there will be deception or that there is a probability of deception.

In para 8 Pl. has pleaded actual deception. See also paras 2 & 3 of the Reply. Note the words "not to have prevented deception".

30

If in a passing off or infringement case witnesses are called who give evidence of actual cases of deception that goes a long way.

In Cope's case actual deception was pleaded but there was no evidence of it. If actual deception is pleaded then there should be evidence of it. Plaintiff actually interviewed people in whose homes they found Tringate.

There being no evidence where actual deception is pleaded this shows the weakness of both parts of the Plaintiff's case.

No. 27
Proceedings
9th February,
1972
(continued)

COMPARING BOXES:

- (a) Difference in colour scheme is very marked. Mr. Reece admits that. We don't have the world famous colours of the red & white of Colgate.

10 No question of any infringement. We have not adopted Plaintiff's essential features. In assuming some degree of similarity there is no question that the ordinary purchaser using ordinary intelligence is likely to be deceived. The burden of proof is a high one.

Plaintiff places emphasis on the word "Tringate" see second point of Particulars under para 7. This is a far fetched inference.

20 How could a purchaser think that "Colgate" would be changed to "Tringate". The very Secretary of the Plaintiff's Company says it would be of great disadvantage to change the name. Both products are selling together so why should the purchaser think that "Tringate" has been substituted for "Colgate". Hernandez thought that there was a person manufacturing toothpaste in Trinidad called "Tringate". Nothing to do with Colgate.

30 Why is no evidence brought by the Plaintiff of deception with all their facilities. Interviewing people and with their plea of actual deception.

Plaintiff is very sensitive. The proceedings against "Diamond" "Triangle" & "Golden Gate". Reece says there is nothing objectionable about "Diamond" & "Triangle" although Company's secretary had alleged in a letter that they were "obvious copies"

PRINCIPLES OF PASSING OFF:

3rd ed. Hals. 38 [995] at p. 594.

40 [998] & [1009] & [1010]
"strong probability of confusion".

If there is evidence of confusion that is strong

No. 27
 Proceedings
 9th February,
 1972
 (continued)

evidence of confusion. Where there is no evidence of confusion and the Plaintiff's trade is of long standing that is evidence of no confusion

[1011]

Solmond 14 ed. p.514 "Onus is a very heavy one".

Here there is no fraud. Fraud greatly assists the Plaintiff. No intention to mislead the public to be equalled with fraud. No evidence of actual deception, though pleaded, so this case must be looked at with great deal of care and reserve. Then again Plaintiff's name is well known - world famous - yet no evidence of actual deception. Evidence of probability means that you do not lightly infer a probability of deception. 10

Burden of proof is:

- (a) no fraud alleged;
- (b) no actual deception proven;
- (c) their product is well known.

The Plaintiff has not discharged the ordinary burden of proof that there is a strong probability of deception. So Plaintiff has not discharged the ordinary burden of proof that lies on it in Civil Cases. 20

Only relevance of the market survey by Mrs. Stephens is that Colgate has a substantial share of the market. This is not a case of fraud that Plaintiff was out by fraud to capture the market. So this evidence is against Plaintiff Mrs. Stephens' survey is made when the Defendant's product is in the market. There is a survey in June 1970 and December 1970. 30

Writ is filed 24th March, 1970 and Statement of Claim amended in October, 1970. Plaintiff sets out on a survey after writ is filed yet Plaintiff undertakes no survey to see if there was actual deception. Injunction granted September, 1970 after Defendant's toothpaste had been on the market a few months.

Plaintiff could have tested effect of Defendant's product on the market in their June survey. 40

Plaintiff files a writ on 24th March. Deliver Statement of Claim 5th June, 1970. On 7th July issue a summons for an injunction. Delay of 4 - 5 months follows. Before application for injunction they send out a letter June 17th to vendors of "Tringate" ordering cessation of sales in 7 days.

No. 27
Proceedings
9th February,
1972
(continued)

ADVERTISEMENTS:

10 If you rely on advertisements in Passing Off you must plead it. 38 Atkin's Forms p. 192 Form 17 2nd ed. You must give details of the advertisement.

But this is not such a case. The advertisements are merely in to show that the Plaintiff's product is widely advertised.

But if even they could be relied upon is evidence to show passing off. They do not.

SALES FIGURES:

20 Thereby show the wide acceptance in Trinidad of Colgate.

No evidence as to when "Fluoride" of Colgate came on the market in relation to "Tringate". However they have not pleaded the Fluoride box but the Colgate red box. So it is irrelevant. Script in relation to passing off.

To Mr. Reece the most important letter was "C".

Our "g" is different from Plaintiff's.

Our "t" is different from Plaintiff's.

30 The script is modern. Look at the "Signal" box.

Plaintiffs have failed to prove their case

Mr. Wharton's Address:

Ex. L.S.2. shows Fluoride of Colgate was on the market since 1964 and the Ex. L.S.1 etc. shows it was regularly on the market.

Salmond on Tort p. 574 does not relate to

No. 27
 Proceedings
 9th February,
 1972
 (continued)

"probability" at all but to damage. If fraud is not shown damage must be described as the basis of strong probability.

Burden of Proof:

Peyton's Case 1901 AC 308 at p. 310.

That passage only relates to the person on whom is the burden but not the degree of the burden.

Lord David at p. 312.

This was a case where an intention to deceive was raised and there was not a scintilla of evidence to support it. 10

Section 5 of 1955 No. 11 shows that what Plaintiff has to show is that the mark is likely to deceive. Probability. So Mc.Naghten is either referring to the person who has to prove - as I contend - or is capable of two interpretation and the one I choose is supported by Section 5

Eno v. Dunne (1890) 15 AC 252, 263 & 258

At page 258 Watson speaks of Defendant making an uncandid statement. Here no statement has been made by Defendant as to the selection by him of the word "Tringate". That word was in the forefront of the case at all material times. 20

Plaintiff objected to "Golden Gate" "Tringate" and "Diamond". Ramkerrysingh withdrew.

"Colgate" trade mark is in respect of the name and in respect of the Company's label.

Company applied to alter its original registration by changing its script. Reece said, except for "Tringate" no other toothpaste had its name in the same script as "Colgate". There is no propriety right in the script as such but copy of the script when you had gone to the trouble to register is a factor in deciding infringement and that the Defendant's goods packaged in this way were likely to confuse the public or to cause them to be associated with the Plaintiff's package. 30

Colgate ordinary tube has the name Colgate in white against red. So too in its "Fluoride" tube. 40

Apart from the fact that "Colgate" is preserving its name and its distinctive design of white script on a red background the reasonable inference is that Company intends to draw difference between Fluoride and its usual is to prevent confusion. What is constant is its name and background.

No. 27
Proceedings
9th February,
1972
(continued)

By reference to "gate" in Colgate and Tringate you can see that the script is the same.

10 E.B.3.:- the registration mark of "Tringate" is class 50 is only in respect of item 10 of class 50. In that registration limited as it is expressed to be to item 10 of class 50 it is said that the map of "Trinidad" is not to be regarded as a distinctive mark. Class 50 item 10 is "other goods not included in the foregoing classes" therefore it is not a registered trade mark for the Defendant's toothpaste. Date of registration was 16th February, 1971.

20 A reasonable inference to draw is that the Daily Need Chemical Works of Hong Kong which produces "Golden Gate" etc. was trading in Trinidad under Patron trading as Daily Need Chemical Works.

"Tringate" is Colgate made in Trinidad. Might not a housewife or domestic servant seeing "Tringate" and "Colgate" seeing "Trin", average shopper says a Trinidad product. Seeing it juxtaposed to a "Colgate" they would say Colgate made in Trinidad. The shopper has not to be right in making this assumption.
30 It is enough if an impression is created in his mind.

Clerk Lindsell 12th Ed. p. 1028 [2038]

"Colgate" package says "made in Jamaica". So persons seeing "Tringate" may be entrapped into buying what he thinks is a local product.

When in addition the tube carries "America Fluoride" and it is known that Colgate is an American product that deepens the condition.

40 The fact that the manufacturer's name is in the "Tringate" is not of importance as it might be made under licence. When that name is in fine print. It points all the more to the likelihood to deceive.

Look at Colgate advertisements in "Express"

No. 27
Proceedings
9th February,
1972
(continued)

12th July, '69 to 27th September, '69, also
Express 25th May - 26th July, of 1969.

Compare 1st with J.R.1. (g) showing that the
angle at which the package is put is the same as
Colgate. The "Tringate" advertisements are in
'69 and the product was on the market in early '70
so Tringate is preparing the public for its product.

The label is important.

Kerly p. 288 [562]

No defence that other marks were added to the
Plaintiff's mark that is not passing off.

10

Relative concentration of Colgate is in the
Rural areas is in the C.E.D. groups of Mrs. Stephens
as you go down. So that is the casual customer.

That is the Plaintiff's case.

Mr. De la Bastide:

Eno v. Dunne. This case can't assist on burden
of proof as it is a case of registration. In
such a case the applicant has to prove.

JUDGMENTTRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 344/1970

No.28
Judgment
14th
February
1972

Between

COLGATE PALMOLIVE LIMITED and

COLGATE PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs

V.

KENNETH FREDERICK PATTRON (Trading as
"The Caribbean Daily Need Chemical Works")

Defendant

Before the Honourable Mr. Justice

Denis E. Malone.

Mr. A. Wharton Q.C. with Mr. Daly for the Plaintiffs.

Mr. T. Hosein Q.C. with Mr. de la Bastide for the

Defendant.

JUDGMENT

The 1st Plaintiff is an international company and amongst other products manufactures toothpaste. The 2nd Plaintiff is a wholly owned subsidiary company of the 1st Plaintiff and purchases the 1st Plaintiff's toothpaste for sale and distribution in this country. The toothpaste distributed here is made up in Jamaica and it with its packages is shipped here for the 2nd Plaintiff to package and present to the local market.

The Defendant is a local manufacturer of fluoride treated toothpaste. In the year 1970 the Defendant put on the market its toothpaste under the brand name of "Tringate." On the 24th March, 1970 a Writ was taken out against the Defendant. The 1st Plaintiff alleging an infringement by the Defendant of its trade mark of the word "Colgate" simpliciter and of its trade mark of the label "Colgate" set in a distinctive design and both Plaintiffs alleging that the Defendant is passing off or assisting others to pass off his goods as those of the Plaintiffs or either of them.

No.28
Judgment
14th
February
1972
(continued)

In all such actions of infringement, the test to be applied is whether the acts of the Defendant are likely to deceive or confuse the public. In the case of a passing-off action involving the use of a mark or the get-up of the goods, the test, where there is no express misrepresentation, is whether the use of the mark of the get-up would associate the goods of the Defendant in the minds of the public as the goods of the Plaintiff. To my mind in a passing-off action of the above kind, which is the nature of the action in this case, the test is the same as for an action of infringement, although the evidence that may be taken into consideration may differ. By the public, in a case dealing with brands of toothpaste sold at large, is not meant those of the public with specialised knowledge of the trade, but the average reasonable member of the public who might be expected to purchase the article in question. In an action of infringement the Plaintiff relies on his title, acquired by the registration of his mark, to the exclusive use of the mark in question for goods of the special kind. In the action of passing off, which is an action of the common law wider in scope than the action of infringement as it is not dependent on a statutory title, the complaint is that the Defendant is representing his goods as the goods of the Plaintiff. In neither action has the Plaintiff to establish fraud nor is the absence of an intention to deceive a defence. Nor on the facts of this case have the Plaintiffs to prove actual damage to establish the passing-off action as if they show that the Defendant is acting so as to pass-off his goods as theirs, it is to be assumed that the Plaintiffs are thereby prevented from selling as many of their goods as they otherwise would. The burden of proof is naturally on the Plaintiff and the standard, despite certain conflicting statements in some of the authorities, is to my mind the ordinary standard of the civil law namely that the greater probability is as the Plaintiff alleges. "Each case" as the learned author of "Kerly on Trade Marks and Trade Names" 9th ed. writes at p.448:

depends on its particular facts as established by the evidence, so that the value of authorities lies not so much in the actual decision as in the test applied by the tribunal."

Decisions which years ago have gone one way might

10

20

30

40

50

today go another. When regard is had to the vast expansion of world trade, the increase in products and manufacturers, the appearance on the world scene, as manufacturers, of countries which formerly were not in that field of activity, it would seem to me that Judges of today should be more hesitant than Judges of yesterday to lay emphasis on seeming similarities that appear in disputes of this nature in order that the law whilst protective of an individual's rights may keep abreast of modern developments.

In this case fraud is not alleged. Nor is it in dispute that for many years the 1st Plaintiff has extensively used and advertised its trade marks throughout the world in connection with its goods. A registration of the name "Colgate" in a distinctive design was first effected in this country in 1932. Since then the registration has been renewed and amended. Today the 1st Plaintiff is the proprietor of the trade marks "Colgate" as a word and "Colgate" set in a distinctive design as a label registered respectively in class 48 as No. 397 on the 10th June, 1958 and as No. 811 on the 18th December, 1959. The label is of a strong red colour. A witness of the Plaintiff described it as blood red but brighter which appears to me to be an accurate description. Against that background is printed the word "Colgate" in white. The whole label has a distinctive design. It is alleged by the Plaintiff that the script used to print that word is "very distinctive." Whilst certainly the script is distinctive - in a sense all scripts are distinctive - it was conceded by Counsel for the Plaintiffs that the 1st Plaintiff has no proprietary right to the script. Indeed the Plaintiffs' witness Mr. Reece acknowledged that to be so. Further the evidence is that on packages of Colgate manufactured in the United Kingdom, the word "Colgate" is printed in what is described as block letters whilst on products manufactured in Jamaica, Canada and the U.S.A. though that word is printed in a different script there are other words printed in block letters. But that the design of the label is distinctive and protected by registration is not in question.

To my mind the first difficulty encountered by the Plaintiffs is in the marked dissimilarity of the brand name "Colgate" to that of the Defendant's. To the eye "Tringate" cannot, I think, be confused with "Colgate" no matter how closely similar may be the scripts in which the two words are printed. To the ear the dissimilarity is as marked. The last syllables of each word are to both ear and eye the same. But the first syllables are so far apart that to my mind there can be no confusion. It is not merely a matter of difference in

No.28
Judgment
14th
February
1972
(continued)

spelling but similarity or near similarity in sound as would for example be the case of "all" and "awl", or "Vic" and "Vix." But a difference in spelling to the extent that every letter of the first syllable of "Tringate" is different to the letters of the first syllable in "Colgate" whilst the very sound of "Trin" bears no resemblance to "Col."

It is however submitted for the Plaintiffs, that to the average reasonable person, particularly those in the lower economic brackets and to whom apparently the Plaintiffs sell the larger portion of their goods, the syllable "Trin" would denote an abbreviated form of "Trinidad." Consequently the brand "Tringate" would denote a product made in Trinidad and as the product in question is toothpaste, the mind of such a person would leap to the conclusion that it was a product of the Plaintiffs made in Trinidad since the last syllable of "Tringate" is the same as the last syllable of "Colgate." To my mind this is a most ingenious argument. But I think it too ingenious as it ascribes to the average person a thought process of too involved a nature. It could be that if a purchaser on seeing "Tringate" toothpaste for the first time gave thought at all to the name other than simply registering it as the name of a new toothpaste, he or she would be likely to conclude that "Trin" was an abbreviation or derivative of Trinidad. Having associated the product with the country I am prepared to accept that the next step would be that the product had been made in Trinidad. But that I think would end the thought process of the average person as he or she would then have arrived at a conclusion. To my mind it is mere speculation to suppose that the average purchaser would, like an addict of crossword puzzles, play with the syllable "gate" and relate it to "Colgate." The more so with the package before him as on the package, albeit in fine print, is the name of the manufacturer. Foreign products as Counsel for the Plaintiffs pointed out, may be manufactured under licence so that having the name of the local manufacturer on a product does not necessarily disassociate the product from its original source. But the fact that the product does bear the name of a local manufacturer and a distinctive brand name would, I think, the more readily lead an average purchaser, as distinct from someone well acquainted with the trade, to regard the product as one not associated with a foreign brand. But even assuming a purchaser to have the bent of a crossword puzzle

addict - though such a purchaser is not, to my mind, the average citizen or as Counsel for the Plaintiffs suggested the average casual purchaser he or she on seeing "gate" in the name "Tringate" is, I think, as likely to conclude that the manufacturer thought of "gate" as the gate that leads to dental health as that it related to "Colgate." Nor, to my mind, because the Defendant's package states that the toothpaste is treated with an American fluoride and "Colgate" is known to have originated in the U.S.A. is there reason to suppose that this would lead the purchaser to link the "gate" of "Tringate" to "Colgate." That argument in fact complicates what I have described as the thought process by introducing yet another step. In the light of the above considerations the following answer of the Plaintiffs' witness Mr. Hernandez in examination-in-chief:

"That there was a manufacturer of toothpaste in Trinidad and that his product was called "Tringate.""

to the question:

"When first you came across the word "Tringate" did it signify anything to you?"

does not carry the Plaintiffs' case beyond the point that a purchaser might conclude that "Tringate" is a toothpaste made in Trinidad. For it cannot be supposed that the word "Tringate" would, without knowledge that it is the brand name of a toothpaste, of itself bring toothpaste to the mind of the average person or to the mind even of an advertising agent like Mr. Hernandez. Nor did I understand Counsel for the Plaintiffs to make that supposition. When further there was no evidence that any purchaser had actually been confused or deceived by the name "Tringate", whether by itself or in conjunction with the product, into believing that he or she was buying a locally made brand of "Colgate," although actual deception is pleaded in paragraph 8 of the Statement of Claim and in paragraph 2 of the Reply, I am unable to accept the Plaintiffs' submission on the word "Tringate." To do so would be to accept speculation as evidence. Moreover speculation which can be matched by other speculation pointing to a different conclusion. On the above premises I find that there has been no infringement of the 1st Plaintiff's trade mark in the name "Colgate."

The features of the 1st Plaintiff's label which strike my eye most forcibly and would, I think, register in the mind of the average person, are the bright red colour on which the lettering is printed and the whiteness of the print upon it together with the word "Colgate."

No.28
Judgment
14th
February
1972.
(Continued)

In the case of those packages which contain toothpaste that is not treated with a fluoride content, the label to all intents constitutes the four sides of the package. That is to say the sides of the packages are in the red of the label and on them is written in white so as to occupy three-quarters of the length of each side of the package, the word "Colgate" in a script a little more elongated than the script of the 1st Plaintiff's registered label but otherwise the same. There is also other writing in white but in much smaller lettering and most of which is in a different script. In the case of the Plaintiffs' fluoride package blue against white is the predominant theme but on it also appears in small size reproduction the 1st Plaintiff's registered label. The theme of red and white and blue and white respectively is carried out on the tubes within the packages. The ordinary Colgate tube is predominantly white with a red cap and with the Colgate registered label printed on the tube. The fluoride tube is also white with a cap seemingly sometimes red and sometimes white with blue lettering and the registered Colgate label on the tube. I draw the above distinction in the colour of the caps as two tubes of fluoride toothpaste one in a box and one by itself were produced.

10

20

When I turn to the Defendant's package I find that its colours are blue, white and orange-red. The word "Tringate" is in white printed in a script very similar, though not identical, to that of the Plaintiffs' against the orange-red which is largely superimposed on the blue of the package, but also extends over a portion of the white of the package. Of these several colours, the one which most forcibly strikes my eye is the blue. It might be described as a Cambridge blue in distinction to the blue of the Colgate fluoride package which is an Oxford blue and it is different also to the blue which appears on the Colgate fluoride tubes. The blues of these tubes I would add differ from one another and each is a different blue to the blue of the Colgate fluoride box. The red of the Defendant's package to my eye is of a quite different shade to the red of the 1st Plaintiff's registered label and consequently to the red on the Plaintiffs' packages. On the tubes within the Defendant's package, the colours are repeated but with this marked difference that with the exception of the cap to the tube which is white, the tube itself is off-white or cream.

30

40

50

As I understand the case of the Plaintiffs, both as regards infringement of the 1st Plaintiff's registered label and as regards the case of passing off, their principal objections are to the use by the Defendant of the word "Tringate," the printing of that word in a similar script to that used by the Plaintiffs for printing the word "Colgate" and the printing of it in white against a red background. Whilst those clearly are important issues, I cannot overlook the other colours and general get-up of the Defendant's package in so far as the passing-off action is concerned. The Plaintiffs themselves clearly recognise the importance of other colours on their packages. Thus the get-up of their fluoride package is markedly different to that of their ordinary package in order, I think, and indeed as Counsel for the Plaintiffs suggested, to ensure that the fluoride package is presented in such a form that in the mind of the public no confusion will be created between tooth-paste of the Plaintiffs containing a fluoride content and toothpaste which does not contain fluoride. The word "Colgate" is an essential feature of the Plaintiffs registered label. The word is also an essential feature in the passing-off action. I have found that between the words "Colgate" and "Tringate" there is no likelihood of confusion or deception. Where there is no deception or confusion with an essential feature in a registered label or with an essential feature of a particular get-up the likelihood of deception or confusion must, to my mind, diminish although there may be other features of similarity. The more so, I think, where the essential feature that is different is, as in this case, the names by which the respective products are known.

So far as the action of infringement of the 1st Plaintiff's registered label is concerned, the evidence satisfies me not only that the names "Colgate" and "Tringate" cannot give rise to the likelihood of confusion or deception, either to the eye, or ear but further that although the script in which those names is printed is closely similar in form and both scripts are white, the background to the script is in quite different shades of red. To my mind there is no likelihood of confusion or deception resulting. I therefore do not consider that there has been any infringement of the 1st Plaintiff's trade mark relating to his label.

So far as regards the action of passing-off is concerned, when to the distinction between the names "Colgate" and "Tringate" is added these facts:

(a) the marked difference between the colours of the

No.28
 Judgment
 4th
 February
 1972
 (continued)

Defendant's package and tube, and the colours used by the Plaintiffs for their various packages and tubes;

- (b) that in those packages and tubes of the Plaintiffs where blue is the predominant colour the blue (whatever its shade) is quite distinct from the blue used by the Defendant on its package and tube;
- (c) that the general arrangement of the colours on the respective packages and tubes is different and even as regards the printing of the brand name in white against red the shade of red is quite different; 10
- (d) that the general layout of the packages is strikingly dissimilar, the Defendant's package having for example a map in white on a blue circle with the name of the producer in fine print around it whilst the Plaintiffs' has not,

then it would seem to me that no confusion or deception can be caused to the eye of the average reasonable person. Nor having regard to the difference in sound between "Colgate" and "Tringate" to the ear of such a person. There are other distinctions which could be mentioned such as the general lay-out of the lettering on the packages and tubes. The Plaintiffs' being both bold and simple whilst the Defendant's is more confused. I do not however regard those differences as of significant importance. I therefore am satisfied that the allegation of passing-off also fails. 20 30

Finally before I pass to judgment I would say a word about the advertisements produced in evidence. The point here made by the Plaintiffs is that in certain of the advertisements of both parties, the dominant feature is a package of toothpaste photographed at the same angle and with the cap end of the toothpaste tube protruding from it. Viewed purely as an object the pictures are similar. But on both is prominent to the eye the respective names of "Colgate" and "Tringate" 40
 For the reasons I have given I fail to see why those advertisements should give rise to the likelihood of confusion or deception.

The action will therefore be dismissed. The

costs to be taxed and paid by the Plaintiffs.

No.28
Judgment
4th
February
1972
(continued)

Denis E.G. Malone,
Judge.

Dated this 14th day of February, 1972.



ORDER

TRINIDAD AND TOBAGO

No.29
Order
14th
February
1972

10 IN THE HIGH COURT OF JUSTICE

No. 544 of 1970

Between

COLGATE PALMOLIVE LIMITED and
COLGATE PALMOLIVE (TRINIDAD) LIMITED
Plaintiffs

And

KENNETH FREDERICK PATTRON (Trading as
"The Caribbean Daily Need Chemical Works")
Defendant

20 Dated and Entered on the 14th day of February, 1972.

Before the Honourable Mr. Justice D. Malone.

This action having been tried on the 3rd, 4th, 7th, 8th and 9th days of February, 1972, before the Honourable Mr. Justice D. Malone and the said Judge having ordered that Judgment as hereinafter provided be entered for the Defendant.

IT IS ORDERED

that this action do stand dismissed out of this Court AND IT IS ORDERED that the following inquiry be made

No.29
Order
14th
February
1972
(continued)

that is to say :-

1. An inquiry whether the Defendant has sustained any and what damages by reason of the injunction granted by an Order dated the 28th day of September, 1970, of the Honourable Mr. Justice Narine, which the Plaintiff ought to pay according to his undertaking contained in the said Order.

AND IT IS ORDERED that the Plaintiff do pay to the Defendant his costs of his action down to the date of this Order, such costs to be taxed. 10

THE COSTS of the said inquiry are reserved.

AND IT FURTHER ORDERED

that execution herein be stayed until after the expiration of the time for appealing against this Order and in the event of an appeal being duly brought and prosecuted until after the determination of such appeal.

And the parties are to be at liberty to apply. 20

Deputy Registrar.

In the Court
of Appeal

No. 30

NOTICE AND GROUNDS OF APPEAL

No.30
Notice and
Grounds of
Appeal
13th March
1972.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Notice of Appeal

Civil Appeal No.10 of 1972

Between

COLGATE PALMOLIVE LIMITED
COLGATE PALMOLIVE (TRINIDAD) LIMITED
Plaintiffs/Appellant

And

KENNETH FREDERICK PATTRON (Trading
as The Caribbean Daily Need
Chemical Works) Defendant/Respondent

TAKE NOTICE that the Plaintiffs/Appellants being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of Mr. Justice Denis Malone dated the 14th day of February, 1972 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

In the Court
of Appeal
No. 30
Notice and
Grounds of
Appeal
13th March
1972
(continued)

10 AND the Appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole of the decision.

3. GROUND OF APPEAL

1. The learned trial Judge erred:

- 20 (a) in failing to appreciate the essential features of the Plaintiffs/Appellants' trade mark as relating to toothpaste that is to say the proper name "Colgate" printed in white on a red background with its distinctive design whilst over-emphasising the dissimilarities in the get-up of the Defendant's toothpaste.
- 30 (b) in holding there was a marked dissimilarity between the name "Colgate" and the name "Tringate".
- (c) in concluding without any evidence that purchasers of toothpaste would be likely to relate the suffix "gate" in the name "Tringate" to "the gate that lead to dental health".
- (d) in holding that to suggest that the word "Tringate" in relation to toothpaste would give the ordinary purchaser the impression that the goods were made in Trinidad by or under licence of the Plaintiffs required too complex as thought process of the purchaser.
- 40 (e) in holding that the printing of the manufacturer's name on the package of the defendant's toothpaste would prevent or assist in preventing deception of purchasers of toothpaste.
- (f) in excluding evidence from the plaintiffs

In the Court
of Appeal
No. 30
Notice and
Grounds of
Appeal
13th March
1972
(continued)

of the signification to consumers of the prefix "Trin" when used as a part of the trade name of consumer goods whilst making a finding about the signification of the said prefix "Trin".

2. The said decision was against the weight of evidence and/or is unreasonable and cannot be supported by the evidence.
4. The relief sought from the Court of Appeal is that the judgment of the learned Judge be set aside and judgment given for the Plaintiffs and that the costs of this appeal and in the Court below be paid by the Defendant/Respondent to the Plaintiffs/Appellants; or alternatively that a new trial be ordered and/or such further order as to the Court of Appeal may seem fit. 10

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

- | | | |
|--------------------------------------|---|----|
| Colgate Palmolive Limited | 64 Colgate Avenue,
Toronto,
Canada. | 20 |
| Colgate Palmolive (Trinidad) Limited | Kirpalani
Roundabout
Barataria | |
| Kenneth Frederick Pattron | 3 Coronation
Street,
Aranjuez,
San Juan. | |

Dated this 13th day of March, 1972. 30

Plaintiffs/Appellants'
Solicitors.

To: The Registrar of the Supreme Court and to
Messrs. Fitzwilliam, Stone & Alcazar,
78 Independence Square,
Port of Spain.
Defendant/Respondent's Solicitors.

No.31JUDGMENT OF HYATALI, C.J.TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.10 of 1972.

Between:

COLGATE-PALMOLIVE LTD.

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs/
Appellants

10

- and -

KENNETH FREDERICK PATTRON
(Trading as The Caribbean Daily Need
Chemical Works)Defendant/
RespondentCoram: Sir Isaac Hyatali, C.J.
M.A. Corbin, J.A.
E.A. Rees, J.A.

April 3, 1974.

20 J.A. Wharton, Q.C. and M. Daly - for the
appellants.
T. Hosein, Q.C. and M. de la - for the
Bastine - respondent.

J U D G M E N TDelivered by Sir Isaac Hyatali, C.J.:

30 The first appellant, as I will call Colgate-Palmolive Ltd., is the proprietor of two valid and subsisting trade marks registered under the Trade Marks Ordinance 1955 hereinafter called the Ordinance. The first was registered as No. 397 on 10 June 1958 and consists of the word "Colgate"; and the second was registered as No. 811 on 18 December 1959 and consists mainly of a label containing the word "Colgate" printed in distinctive script in white on a red background.

In the Court
of AppealNo.31Judgment of
Hyatali, C.J.
3rd April
1974

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

Both marks were entered in the Register of Trade Marks in Class 48 in respect of perfumery including toilet articles preparation for the teeth and hair and perfumed soap.

The second appellant, as I will call Colgate-Palmolive (Trinidad) Ltd., is the registered user of the said trade marks. It is a wholly owned subsidiary of the first appellant and has, since July 1960, sold and distributed in this country the first appellant's toothpaste put up in tubes and packages bearing the two trade marks aforesaid. "Colgate" is the surname of the late William Colgate who established the first Colgate enterprise in 1806. He was one of the founders of the Colgate group of international companies as they are known today. The word "Colgate" has been used locally as a trade mark for toothpaste manufactured by the first appellant for upwards of 35 years; in fact since 1932.

10

The respondent, as I will call Kenneth Frederick Pattron, trades under the name of The Caribbean Daily Need Chemical Works. He manufactures a variety of products including toothpaste. In or about January 1970 he introduced and began to sell in the local market a fluoride-treated toothpaste. It was put up in tubes and boxes bearing a label consisting of the word "Tringate" printed in script in white, against a red background. This label, it was said, closely imitated the two registered trade marks of the first appellant.

20

30

In proceedings instituted in March 1970, the first appellant claimed that the respondent had infringed both its trade mark of the word "Colgate" and of its label containing the word "Colgate" printed in distinctive script in white on a red background. Further, that he was passing off his toothpaste as the goods of the first appellant amongst the trade and the general public. With leave obtained in that behalf thereafter, the second appellant joined the first appellant in the claim for passing-off against the respondent. As pleaded, the substance of the case against the respondent was, that his use of the get-up and the word "Tringate" in connection with toothpaste not manufactured or sold by the appellants (a) constituted an infringement of their said trade marks; (b) was calculated to deceive and had in fact led to deception and the belief that his toothpaste was the goods of the

40

50

appellants or either of them; and (c) was calculated to cause and must have caused toothpaste which was not manufactured or marketed by the appellants to be passed off as their goods.

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 It was beyond question that the trade marks, the trade name and the get-up associated with the first appellant's toothpaste sold in this country enjoy and have long enjoyed an established reputation amongst the trade concerned and the general public. The respondent did not and indeed made no attempt to challenge this fact in any way. His case was that neither his use of the word "Tringate" nor its use thereof on the label referred to (1) infringed the trade marks of the appellants; or (2) had any of the effects or consequences, whether calculated or actual, for which the appellants contended.

20 The learned judge rejected and accordingly dismissed the claims of the appellants. In a considered judgment he stated his principal findings in these terms;

30 "So far as the action of infringement of the first appellant's registered label is concerned, the evidence satisfies me not only that the names 'Colgate' and 'Tringate' cannot give rise to the likelihood of confusion or deception, either to the eye, or ear but further that although the script in which those names is printed is closely similar in form and both scripts are white, the background to the script is in quite different shades of red. To my mind there is no likelihood of confusion or deception resulting. I therefore do not consider that there has been any infringement of the first appellant's trade mark relating to his label.

40 So far as regards the action of passing-off is concerned, when to the distinction between the names 'Colgate' and 'Tringate' is added these facts:

- (a) the marked difference between the colours of the respondent's package and tube, and the colours used by the appellants for their various packages and tubes;
- (b) that in those packages and tubes of the appellants where blue is the

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

predominant colour and blue (what-
ever its shade) is quite distinct
from the blue used by the [respon-
dent] on its package and tube;

(c) that the general arrangement of the
colours on the respective packages
and tubes is different and even as
regards the printing of the brand
name in white against red the shade
of red is quite different;

10

(d) that the general layout of the
package is strikingly dissimilar,
the [respondent's] package having for
example a map in white on a blue
circle with the name of the producer
in fine print around it whilst the
[appellants'] has not,

then it would seem to me that no confusion or
deception can be caused to the eye of the
average reasonable person. Nor having regard
to the difference in sound between 'Colgate'
and 'Tringate' to the ear of such a person.
There are other distinctions which could be
mentioned such as the general lay-out of the
lettering on the packages and tubes. The
[appellants'] being both bold and simple whilst
the [respondent's] is more confused. I do
not however regard those differences as of
significant importance. I therefore am
satisfied that the allegation of passing-off
also fails."

20

30

It will be observed that in respect of both
causes of action, infringement and passing-off, the
learned judge directed his mind specifically to
"confusion or deception" and held in respect of the
first that there was no likelihood of its occurrence,
and in respect of the second, that it could not be
caused either to the eye or ear of the average
reasonable person. In fact, it is clearly dis-
cernible from his judgment as a whole that
confusion or deception or the likelihood of it was
regarded by him (and I think rightly so) as the
underlying concept or central issue in each of the
claims made by the appellants and that his findings
on that issue in both instances constituted the
basis of his decision to reject the appellants'
claims.

40

In their notice of appeal two main grounds are
given. Under the first, twelve distinct errors

are attributed to the learned judge, while under the second, the complaint is that his decision is against the weight of evidence and/or is unreasonable and cannot be supported having regard to the evidence. The submissions in support of these grounds ranged over a wide field but in my judgment those which are material to this appeal may be conveniently reduced to the following propositions: The learned judge -

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

- 10 (a) erred in holding that in an action for passing off involving the use of the mark or get-up of the goods the test for liability was the same as the test for the infringement of a registered trade mark;
- (b) failed to consider the imperfect recollection of the ordinary customer or the incautious purchaser in reaching his decision;
- 20 (c) wrongly excluded admissible evidence to establish the likelihood of deception in the consumer trade; and
- (d) wrongly evaluated the evidence in support of the claims of the appellants and rejected them without justification.

30 The submission that the learned judge erred in holding that the test for determining liability under both claims was the same appeared to me to be founded on a misconception of the real issues between the parties at the trial and a misinterpretation of the context in which that test was propounded. The claim for infringement was made under the provisions of s.5(1) of the Ordinance. It prescribes that the valid registration of a person as the proprietor of a trade mark in respect of any goods confers on him the exclusive right to the use of the mark in relation thereto and that that right without prejudice to the generality of this provision -

40 "shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or the registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such a manner as to render the use of the mark likely to be taken either

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

- (a) as being use as a trade mark; or
- (b) in a case in which the use is use upon the goods . . . as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark, or the goods with which such a person as aforesaid is connected in the course of trade."

The provision is borrowed from s.4(1) of the English Trade Marks Act 1938. A paraphrase of it which I find apt and useful is given in Clerk & Lindsell on Torts 13th Edn. 1189 para. 2204 in these terms:

10

"This right is infringed by any person who, not being the proprietor of a trade mark or a registered user thereof, and without express or implied consent of the proprietor or a registered user, uses in relation to such goods an identical mark, or one so nearly resembling it as to be likely to deceive or cause confusion, either as a trade mark, or so that it is likely to be taken as a trade mark, or in some sort of way as indicating a trade origin in relation to the goods."

20

In Saville Perfumery Ltd. v June Perfect Ltd. and Anor (1941) 58 R.P.C. 147, Sir Wilfred Greene, M.R. made a valuable comparison between the provisions of the English statute on infringement and the law on passing-off. He stated at p.161 (ibid):

30

"The statute law relating to infringement of trade marks is based on the same fundamental idea as the law relating to passing-off. But it differs from that law in two particulars, namely, (1) it is concerned only with one method of passing off, namely, the use of a trade mark and (2) the statutory protection is absolute in the sense that once a mark is shown to offend, the user of it cannot escape by showing that by something outside the actual mark itself he has distinguished his goods from those of the registered proprietor. Accordingly in considering the question of infringement, the Courts have held, and it is now expressly provided by the Trade Marks Act 1938 Section 4, that infringement takes place not merely by exact imitation but by the use of a mark so

40

nearly resembling the registered mark as to be likely to deceive. The questions therefore arise: First, is there a resemblance, and, second, is the resemblance so close as to be likely to cause deception."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 This comparison, which I respectfully adopt
for present purposes, also illustrates the
fundamental difference between a case of infringe-
ment based on the use of a mark that is identical
with, and one based on the use of a mark that
resembles, a registered trade mark. In the former
case it is not necessary to the success of the claim
to establish deception or confusion but in the
latter case it is essential to do so. The
appellants' claim against the respondent fell in
the latter category, hence the issue joined
between them was whether he used marks which
resembled the appellants', and if so, whether the
resemblance was so close as to be likely to deceive
or cause confusion. In relation to the claim for
20 passing off the crucial issue between the parties
was whether the respondent's use of the marks, name
or get-up on which the claim for infringement was
based, constituted a representation which deceived
or caused confusion or was likely to do so. The
case fell squarely within the principles enunciated
by Lord Parker of Waddington in the House of Lords
in A.G. Spalding & Bros. v A.W. Gamage Ltd. (1915)
32 R.P.C. 273 and in which the other law Lords
30 concurred. He said this at p.284 (ibid) -

40 "My Lords the basis of a passing-off action
being a false representation by the defendant,
it must be proved in each case as a fact that
the false representation was made. It may,
of course, have been made in express words,
but cases of express misrepresentation of this
sort are rare. The more common case is where
the representation is implied in the use or
imitation of a mark, trade name, or get-up
with which the goods of another are associated
in the minds of the public, or of a
particular class of the public. In such cases
the point to be decided is whether, having
regard to all the circumstances of the case,
the use by the defendant in connection with
the goods of the mark, name or get-up in
question impliedly represents such goods to
be the goods of the plaintiff, or the goods of
the plaintiff of a particular class or quality.
50 Or, as it is sometimes put, whether the
defendant's use of such mark, name, or get-up
is calculated to deceive."

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

Deception or confusion then was not only common to both claims but emerged as and remained the central issue between the parties at the trial. It is in reference to this issue and against this background that the test propounded by the learned judge must be read and applied. Let me quote what he actually stated:

"In all such actions of infringement" he said "the test to be applied is whether the acts of the [respondent] are likely to deceive or confuse the public. In the case of a passing-off action involving the use of a mark or get-up of the goods, the test where there is no express misrepresentation is whether the use of the mark or the get-up [sic] would associate the goods of the [respondent] in the minds of the public as the goods of the [appellant]. To my mind in a passing off action of the above kind which is the nature of the action in this case, the test is the same as for an action of infringement although the evidence that may be taken into consideration may differ."

By his use of the expression "in all such actions of infringement" the learned judge was, quite clearly, referring to the use of the marks which resembled and not marks which were identical with the registered trade marks; and by his use of the expression "in a passing-off action of the above kind" he was, equally clearly, referring to the gravamen of the appellants' complaint that the respondent's user of those very marks on his goods constituted an implied representation which, to employ Lord Parker's test (supra), was calculated to deceive. In this connexion however I must draw attention to a discussion on "Deceptive Resemblance" in Kerly's Law of Trade Marks and Trade Names 10th Edn. p. 450 at para. 17-01. There the learned authors refer to the fact that this question arises in several different proceedings and that most of the general considerations applicable in deciding this question are common to all these proceedings. They go on nevertheless to say this:

"There are, however, differences in the way the rules governing this matter must be applied in the different proceedings. Thus actions for infringement and actions for passing-off raise rather different questions: in infringement, the question is whether the marks are confusingly similar while in

passing-off the question is rather whether what the defendant has actually done is confusing or deceptive in the light of the plaintiff's actual reputation."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 It would appear from this statement as worded that the only question in infringement is whether the marks are confusingly similar. I do not think however that the learned authors intended to convey that impression, since it is manifest from the provisions of the statute that in a case where the plaintiff proves that a mark identical with his has been used by the defendant as a trade mark it is not necessary for the success of the claim to prove further that they are confusingly similar. This question would arise only if the mark used by the defendant so nearly resembled the plaintiff's that they could be said to be confusingly similar. In that event the test to be applied to resolve it is whether the use of the challenged marks or trade marks deceive or confuse or are calculated so to do. Similarly the test to be applied in passing-off cases to the representation made by the employment of a mark which resembles the plaintiffs' is, whether they deceive or confuse or are calculated so to do. While therefore it is, generally speaking, true to say that different questions arise in these two actions, it is also true to say, in my judgment, that where confusion or deception by the use of a mark which resembles, 30 forms the basis of a claim in both infringement and passing off (as it was in the instant action) the test to determine liability in both cases is the same. This is what I understood the learned judge to say and so interpreted it is not, in my judgment, in conflict with the passage I have quoted from Kerly (supra). Nor, as counsel for the respondent correctly submitted, in my view, can it be successfully assailed as an incorrect statement of the law.

40 I have dealt with this point at some length out of deference to counsel for the appellants who argued attractively and with tenacity that the error of the learned judge in applying the wrong test which I have been discussing, coloured the whole of his approach to the issues in the case and led him to the wrong conclusion. For the reasons stated I cannot and do not accept that proposition. Indeed having given my careful consideration to the sustained and skilful submissions of counsel on 50 both sides, it seems to me that the better argument of the appellants is that the learned judge's evaluation of the facts which were not in dispute

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

was at fault and consequently his decision cannot be supported. As to whether this argument can be sustained I will consider presently. But first I must get out of the way two other complaints made by the appellants.

During the course of the trial Ricardo Hernandez, managing director of an advertising agency which promoted Colgate products in different media was called to establish, inter alia, three points, but an objection was taken to the evidence and the learned judge upheld it. A conflict arose before us, arguendo, as to what was the true purpose of the evidence at the trial but it is resolved I think by what the learned judge himself stated when he ruled against it: So far as is relevant he said:

10

"In this instance what the appellants are seeking is to show that the word 'Trin' is an abbreviated form of Trinidad and further (and this to me is the major objection to the admissibility of the evidence) that when used to form part of a brand name means not only 'Trinidad' but 'made in Trinidad'.

20

.
Further, evidence that use is made of the word by manufacturers engaged in trades other than the trade in this case heightens the speculative nature of the evidence and results in the introduction of mere similar fact evidence of the acts of others not engaged in the trade in question."

30

It is clear therefore that the appellants were seeking to show by evidence (1) that the prefix "Trin" was an abbreviated form of "Trinidad"; (2) that the prefix "Trin" when used to form part of a brand name meant "made in Trinidad"; and (3) that use was made of this prefix by manufacturers in trades other than the trade in which the appellants were concerned, to convey or imply a like meaning. The specific question which gave rise to the objection was: "To what types of goods does the use of the word 'Trin' relate?"

40

When the learned judge came to deliver his considered judgment however he repented of his ruling since he accepted and so stated therein that a purchaser on seeing "Tringate" toothpaste for the first time would be likely to conclude that "Trin" was an abbreviation or derivative of "Trinidad"

and, moreover, would conclude further that the product had been made in Trinidad. The appellants however wanted to establish in addition, but they were not allowed to do so, the further point, that other manufacturers in the country engaged in trades different from theirs used the prefix "Trin" to identify their products as having been manufactured in Trinidad.

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 Counsel for the respondent submitted that notwithstanding the ruling of the learned judge the evidence which the appellants were seeking to introduce was by the ingenuity of their counsel at the trial extracted ultimately from the same witness at the end of his examination-in-chief when to the question "when you first came across the word 'Tringate' what did it signify to you" he replied "that there was a manufacturer of toothpaste in Trinidad and that his product was called 'Tringate'." This answer however could hardly (if
20 at all) be said to have established the third point which the appellants were seeking to advance.

The question therefore is whether the evidence was admissible and if so whether the appellants were prejudiced by its exclusion. To justify their contention that it was admissible reference was made to de Cordova v Vick Chemical Co. (1951) 68 R.P.C. 103 in which evidence was received in support of claims for infringement and passing-off to show that for a period of ten years or more
30 "the trade and the public used the expression 'Vicks Vaporub' as indicating the salve or ointment made by the plaintiff and that the words 'Vicks' alone and 'Vaporub' alone were used synonymously with 'Vicks Vaporub'." This evidence, which was not disputed, was held to have successfully rebutted the defendant's answer to the plaintiff's claim that the term 'Vapour rub' was a bona fide description of the character and quality of certain jars of ointment sold by the defendant under the
40 name "Karsote Vapour Rub".

The issue which arose in the instant case however was not the same as in de Cordova's case (supra) since the respondent never contended that "Tringate" was a bona fide description of the character and quality of his toothpaste. But even so, it seems to me, that the rejected evidence was relevant and admissible to show, if believed, that the general public understood the prefix "Trin" as
50 part of a brand word to designate a product or its

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

name in this country it meant that it was made in Trinidad. I would therefore accept the contention of counsel for the appellants that the evidence was wrongly rejected but having done so I find myself hard put to conclude that it resulted in substantial prejudice to their case. The fact is that the learned judge accepted ultimately, and I would agree with his conclusion, that the significance of the prefix "Trin" to a purchaser was that it was not only an abbreviation or derivation of the word "Trinidad" but that "Tringate" toothpaste implied that the product had been made in Trinidad. To prove in addition to this that other manufacturers in Trinidad used the prefix "Trin" in their brand names to indicate that their products were made in Trinidad would have assisted the appellants' contentions but it seems to me that it could hardly be said in the light of the judge's conclusion that serious or substantial prejudice resulted to their case because they were not allowed to prove that fact.

10

20

The next complaint for examination is that the learned judge omitted to consider the impact of the mark used by the respondent on the incautious purchaser of imperfect recollection. It was submitted that the preponderance of authority showed that such a purchaser had not only to be given emphasis in actions for infringement and passing-off involving consumer goods, but that he was not to be equated with because he was different from the reasonable man in cases of contract or tort. In his judgment the learned judge said that in a case dealing with brands of toothpaste sold at large "the public" meant "the average reasonable member of the public who might be expected to purchase the article in question" and not those members of the public with a specialised knowledge of the trade. Thereafter he used in reference to the same context the expression "average person" four times, "average reasonable person" thrice, "average purchaser" twice, "average citizen" once and "casual purchaser" once. In considering this question, what is of importance, in my judgment, is the standard of attention or carefulness that is expected of the ordinary member of the purchasing public. This, I would think, is the better approach to the question. This standard has been considered in a number of cases dealing with infringement, passing-off and applications to register a trade mark. Some of the principles based upon the authorities quoted therein are usefully summarised in Kerly's (supra) p. 454 para. 17-06 as follows:

30

40

50

"It must not be assumed that a very careful or intelligent examination of the mark will be made and if it is shown that the class of persons who brought the goods were illiterate that is a material fact in cases where printing enters into the marks; but on the other hand it can hardly be a bar to the admission of a mark that usually stupid people, fools or idiots may be deceived."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 In Tatem and Co. (1915) Ltd. v Gaumont Co.
(1917) 34 R.P.C. 181, Warrington, L.J. defined the
test at p. 190 as

"whether there is so much imitation that goods bearing the one mark may be readily mistaken for goods bearing the other; and whether a more careful inspection than the ordinary customer is likely to give is necessary to distinguish the one from the other."

20 In Coombe v Mendil Ltd. (1913) 30 R.P.C. 709,
Eve, J. stated it thus:

"Whether there would be a risk of confusion between the two marks not by those persons who never notice anything but by those persons who take ordinary care to observe what is staring them in the face."

30 On the question of imperfect recollection, Romer, L.J. in Bale & Church Ltd. v Sutton, Parson & Sutton (1934) 51 R.P.C. 129 at p.141 issued the gentle reminder that an ordinary purchaser had only an ordinary memory, while the dissenting judgment of Luxmore, L.J. in Rysta's Limited's Application (1943) 60 R.P.C. which ultimately received the support of the House of Lords, contains an opinion on this question which is invaluable for present purposes, even though it was given in reference to the registration of trade marks so closely resembling those already on the Register as to be likely to deceive or cause confusion.

40 "The answer", he said, "to the question whether the sound of one word resembles too nearly the sound of another so as to bring the former within the limits of section 12 of the Trade Marks Act 1938 [the counterpart of s.14 of the Ordinance] must nearly always depend on first impression, for obviously a person who is familiar with both words will neither be deceived nor

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

confused. It is the person who only knows the one word and has perhaps an imperfect recollection of it, who is likely to be deceived or confused. Little assistance, therefore, is to be obtained from a meticulous comparison of two words, letter by letter and syllable by syllable pronounced with the clarity to be expected from a teacher of elocution. The court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part not only of the person seeking to buy under the trade description but also of the shop assistant ministering to that person's wants."

10

It is to be observed that Luxmore, L.J. made no express mention in that quotation of the ordinary purchaser or customer but this is no warrant for concluding that he was not referring to such a person or had a different kind of person in mind. On the contrary, it is reasonable to assume that the allowance which he advocated for imperfect recollection was in reference to the ordinary purchaser or customer.

20

It seems to me then that the fair result of these and other cases, with which it is not necessary to burden this judgment is, that the persons to be considered are, as was stated by Lord Cranworth, L.C. in Seixo v Provezende (1865) L.R. 1 Ch. 192, at p. 196 "ordinary purchasers purchasing with ordinary caution" and, I would add, possessing "an ordinary memory" as Romer, L.J. stated in the Bale & Church Ltd. case (supra).

30

The question raised in the instant case was whether the learned judge had such a purchaser in mind. It was submitted by counsel for the respondent that comprehended within the expressions used by the learned judge, "average reasonable member of the public", "average reasonable person" and "average person" were the incautious purchaser and the purchaser of imperfect recollection. I am prepared to accept this submission as reasonable since it would in my view be illogical to infer, and rash to assume, that because the learned judge did not expressly mention purchasers in these two categories he in fact failed to consider them in reaching his decision. Moreover, to accept the appellants' submission would have the effect of introducing a distinction between "the ordinary purchaser" or "the average

40

50

reasonable member of the public" in actions for infringement and passing off involving consumer goods, on the one hand, and "the reasonable man" in cases of contract or tort, on the other. This would not only result in the admission of a medley of standards of men in the law (for example, one who was reasonable, one who was more reasonable, one who was less reasonable or even one who was not reasonable) but would make for confusion in areas of the law where clarity was essential. The better approach, in my opinion, is to accept "the reasonable man" as the standard in all these cases but to make allowances for the fact that in actions of the instant kind for infringement and passing off involving consumer goods he is one who is expected in the ordinary course to be incautious or to have an imperfect recollection. I would therefore reject as well the appellants' complaint made under this head.

In the Court
of Appeal

—
No. 31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

The last and most important question now falls for consideration and it concerns the evaluation of the evidence by the learned judge. The principles by which an appellate court is guided in a case of this kind must first be stated.

In the leading case of Benmax v Austin Motor Co. Ltd. (1955) 1 All E.R. 326, Lord Reid at p.329 enunciated the test for interfering with the decision of a judge in a case tried by him alone as follows:

"in cases where there is no question of the credibility or the reliability of any witness, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal court is generally in as good a position to evaluate the evidence as the trial judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion."

In that case, which involved the infringement of letters patent in respect of an invention, the Court of Appeal took the view that the trial judge had drawn the wrong inference from facts which were not in dispute and reversed his decision. On Appeal to the House of Lords the decision of the Court of Appeal was held to be right.

Counsel for the respondent contended however, that what is involved in the instant case was different from what arose in the Benmax case (supra).

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

This is a case, it was argued, which was concerned with the exercise of a judgment to determine the presence of confusion or deception, and moreover a decision which was based not on mere inference from the facts but on the weight which ought to be given to them. The question raised was more akin, it was said, to a case in which a judge made an assessment of damages on agreed facts and unless it could be shown that the judge misdirected himself on the law and on the facts or that his evaluation of the evidence was plainly unreasonable this court should not interfere with his decision. 10

This approach however is not supported by the Benmax case nor by the long line of authorities in this branch of the law. It is not necessary however to discuss them here since the principles which they establish are quite clear. I would merely refer, and this should suffice for present purposes, to two fundamental and well established propositions enunciated in the speeches of Lord Hodson and Lord Devlin in Parker-Knoll Ltd. v. Knoll International Ltd. (1962) 10 R.P.C. 265 at pp. 285 and 295 respectively. The headnote states them thus: 20

By Lord Hodson:

- (1) "The question whether an offending mark so nearly resembles a registered mark as to be likely to deceive or cause confusion is a question for the judge and not for the witnesses. To use the words of Lord McNaghten in Payton & Co. Ltd. v Snelling, Lampard and Co. Ltd. (1900) 17 R.P.C. 635 he 'must not surrender his own independent judgment to any witness whatever'." 30

By Lord Devlin:

- (2) "In a passing-off action, the question of the likelihood of deception of the public by the use of a particular name is a question for the court that does not depend solely or even primarily on the evidence of persons experienced in the way of purchasers of a particular class of goods. Therefore the trial judge is not in a better position than an appellate court to determine the fundamental question whether there is a likelihood of the public being deceived. 40 50

The court must in the end trust to its own perception into the mind of the reasonable man."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

10 The facts in this case, as already noted, were not in dispute. The trial judge therefore was not in a better position than this court to determine the fundamental question of deception or confusion common to the two claims. The point for decision in these circumstances is whether the learned judge's evaluation of and conclusions on these facts were right. If they were not, then this court ought not, in Lord Reid's words (supra), to shrink from the task of substituting its own evaluation and conclusions on that fundamental question if after giving due weight to the learned judge's opinion, it considers it right to do so.

20 After quoting a passage from Kerly (supra) to the effect that each case depended on its particular facts as established by the evidence and that the value of authorities lay essentially in the test applied by the tribunal, the learned judge expressed this opinion:

30 "Decisions which years ago have gone one way might today go another. When regard is had to the vast expansion of world trade, the increase in products and manufacturers, the appearance on the world scene as manufacturers, of countries which formerly were not in that field of activity, it would seem to me that Judges of today should be more hesitant than Judges of yesterday to lay emphasis on seeming similarities that appear in disputes of this nature in order that the law whilst protective of an individual's right, may keep abreast of modern developments."

40 I do not, with great respect to the learned judge, consider that this opinion of his is in accord either with the object of the Ordinance or in harmony with the true concept today of the action for passing-off, which is the inhibition of unfair trading. In Spalding v Gamage (supra) a leading and oft-quoted case in this branch of the law, Lord Parker in reference to the principle underlying actions for passing-off stated this:

"I believe that principle of law may be very plainly stated, and that is, that nobody has any right to represent his goods as the goods of somebody else."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

This was uttered in 1915 but nothing has been said in any of the authorities since, so far as I am aware, to whittle down that principle. On the contrary, the tendency of recent decisions has been towards the expansion of the scope of this action to embrace a more general concept of unfair trading. This is apparent from the recent cases of Bollinger v Costa Brava Wine Co. Ltd. (1961) 1 All E.R. 561; Vine Products v McKenzie & Co. (1969) R.P.C. 1; and John Walker and Sons Ltd. v Henry Ost & Co. Ltd. (1970) R.P.C. 489, the decisions in which have prompted the learned authors of Clerk & Lindsell on Torts (supra) to make the comment (see note 91 at p.1199 *ibid*) that it would be interesting to see where the courts draw the line in future cases.

10

I think the courts are moving in the right direction in seeking to extend the scope of the action because it seems to me that the "expansion of world trade" and "modern developments" of which the learned judge spoke, make it more imperative than ever before, for the courts to be vigilant in preventing erosion of the salutary principle of the passing-off action which the Ordinance seeks to reinforce that it is unfair trading for a man to represent his goods or business as, or to deceive or confuse others into believing that his goods or business are, the goods or business of another or to use means to attract the goodwill connected with the reputation of the goods of another to his own. See Bollinger v Costa Brava Wine Co. Ltd. (supra) per Danckwerts, J. at p. 568. Accordingly, I do not share the hesitation which the learned judge felt should enter into the process of assessing "seeming similarities" in disputes of this nature.

20

30

Having overruled ultimately from the seat of judgment his own decision in the course of the trial on what he thought at first to be "the major objection" to the evidence sought to be led through Hernandez, the learned judge reached the point where he held, and quite rightly in my view, that it was reasonable to suppose that the ordinary purchaser, (who I have already demonstrated is one purchasing with ordinary caution and possessing an ordinary memory) would conclude on seeing Tringate, that the prefix "Trin" was a derivative of Trinidad and that "Tringate" toothpaste was a toothpaste made in Trinidad.

40

50

Let me then set out here the other facts which

were before him. They were (1) the word "Colgate" was the surname of a person and not a word descriptive of the character and quality of a product; (2) as such the word "Colgate" was long associated with and had been the brand name for the first appellant's toothpaste sold in this country for upwards of 35 years; (3) "Colgate" toothpaste had a well-entrenched reputation as such in this market; (4) the word "Colgate" and the label bearing that word were validly registered as the trade marks of the first appellant; (5) the mark "Colgate" was printed in white in a distinctive script against a red background on the boxes in which the appellant's ordinary toothpaste in tubes was sold and against a red, white and blue background on the boxes in which their fluoride toothpaste in tubes was sold; (6) the distinctive script was an outstanding feature of their trade marks even though no proprietary right therein existed or was claimed; (7) the respondent in January 1970 introduced into the local market a toothpaste manufactured by him and put up in boxes bearing the name "Tringate" toothpaste; (8) the word "Tringate" was printed in white in a distinctive script closely similar to or almost identical with the distinctive script in white projecting the word "Colgate" in the boxes in which the first appellant's ordinary toothpaste was sold; (9) the colours red, white and blue, were employed to compose the "Tringate" label and to portray the get up of the boxes and the tubes containing the respondent's toothpaste; (10) the same colours but of a brighter hue were employed to compose the "Colgate" label and to portray the get-up of the boxes in which Colgate fluoride toothpaste was sold; (11) the last syllable in each of the two words "Tringate" and "Colgate" was not only identical in sound but was written in distinctive script in white, identical with each other save that the script of the former was larger than the latter.

The question which arose for consideration against such a background of facts and circumstances was whether not merely the word but the idea of the word "Tringate" (a) printed on a label in white in distinctive script closely similar to or nearly identical with the distinctive script printed in white on the label projecting the word "Colgate"; and (b) printed in boxes and tubes reflecting the same colours, red, white and blue, (albeit in lighter hues) as those carrying the "Colgate" label were confusingly similar to the word "Colgate" or to the label bearing the word

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April
1974
(continued)

In the Court
of Appeal

No. 31

Judgment of
Hyatali, C.J.
3rd April,
1974
(continued)

"Colgate", or put another way whether the mark, name or get-up used by the respondent in relation to his toothpaste was likely to deceive or cause confusion in the mind of the ordinary purchaser. Alerting my mind to the danger of allowing my own temperament or idiosyncratic knowledge to influence my decision (see General Electric Co. v The General Electric Co. Ltd. (1972) 2 All E.R. 507 per Lord Diplock at p.515), and removing that danger out of my ken, I have come to the conclusion after giving due weight to the opinion of the learned judge that the question posed should be answered in the affirmative. I accordingly hold that the use by the respondent of the word "Tringate" on the label employed by him to introduce and sell his toothpaste was a use by him of a trade mark which so nearly resembled the trade marks of the appellants as to be likely to deceive or cause confusion within the meaning of s.5(1) of the Ordinance. He must therefore be held liable for infringement of their registered trade marks.

10

20

The substance of the claim against the respondent for passing-off was not based on an express misrepresentation but on one which was implied by his use in the course of trade of a mark which resembled the trade marks of the appellants. The point that fell to be decided therefore, if I may respectfully employ the words of Lord Parker in the Spalding case (supra), was whether having regard to all the circumstances of the case, the use by the respondent in connection with his toothpaste of the mark, name or get-up in question impliedly represented such toothpaste to be that of the appellants. Or put another way, whether the respondent's use of such mark, name or get-up was calculated to deceive.

30

After holding that the names "Colgate" and "Tringate" could not give rise to the likelihood of confusion or deception either to the eye or to the ear and that the closely similar distinctive scripts of both labels were of no moment, the learned judge proceeded to enumerate five different factors to support his conclusion that the claim for passing-off failed. They were "(a) the marked difference between the colours of the respondent's package and tube and the colours used by the appellants for their various packages and tubes; (b) on those packages and tubes of the appellants where blue was the predominant colour it was quite distinct from the blue used by the respondent on his package and tube; (c) the general arrangement of the colours on the respective packages and tubes

40

50

of the parties was different; (d) the red in the two packages against which the printing of the brand name in white was made was quite different; and (e) the general layout of the respective packages of the parties was strikingly dissimilar, the respondent's package for example having a map in white on a blue circle with the name of the producer in fine print around it whilst the appellant's packages had not."

In the Court
of Appeal

—
No.31

Judgment of
Hyatali, C.J.
3rd April,
1974
(continued)

10 I am not however impressed with the signi-
ficance of, or the conclusion drawn from these
differences, and for two reasons. Firstly,
because it is clear to me from the evidence and my
examination of all the packages that what the
respondent really did was to borrow features from
the packages, tubes and label of the appellants,
and to knit them together, as it were, into the name
and label which he used as a trade mark; and
20 secondly, because the ordinary purchaser of
ordinary memory purchasing with ordinary caution
could not be expected to make the close and careful
side by side examination of the two products which
the learned judge obviously made to identify and
highlight the differences which he enumerated.

Bearing in mind that it is not necessary to
the success of a passing-off action that proof
should be given of an intention to deceive (Singer
Manufacturers v Wilson (1877) 3 App. Cas. 376,
per Lord Cairns, L.C. at p. 391) or that actual
30 deception had taken place (Johnston v Orr-Ewing
(1882) 7 App. Cas. 219) and that the trade marks,
trade names and get-up of the appellants' tooth-
paste have a long and established reputation
amongst the consumer trade and the general public I
have come to the conclusion that the mark, name and
get-up used by the respondent in connection with
his toothpaste constituted an implied represent-
ation that his toothpaste was that of the
40 appellants or at any rate his use of the said mark,
name and get-up was calculated to deceive or to
attract the goodwill of the appellants' toothpaste
to his. I accordingly hold that the respondent
is also liable in the action for passing-off.

For these reasons I am of opinion that the
appeal should be allowed, that an injunction be
granted in the terms prayed for in the amended
statement of claim, that an order for obliteration
or modification (as the case may be) upon oath in
the terms of paragraphs 2 and 4 of the said state-
50 ment of claim be made against the respondent and

In the Court
of Appeal

No.31

Judgment of
Hyatali, C.J.
3rd April,
1974
(continued)

that there be at the respondent's option (to be notified in writing to the appellants within seven days) an account of profits, or in default of such notification, an inquiry as to damages and payment of all sums found due upon taking such account or inquiry as the case may be.

Isaac E. Hyatali
Chief Justice

No.32

Judgment of
Corbin, J.A.
3rd April,
1974

No.32

JUDGMENT OF CORBIN, J.A.

10

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 10 of 1972

Between

COLGATE-PALMOLIVE LTD.

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs/
Appellants

- and -

KENNETH FREDERICK PATTRON
(Trading as The Caribbean
Daily Need Chemical Works)

Defendant/
Respondent

20

Coram: Sir Isaac Hyatali, C.J.
M.A. Corbin, J.A.
E.A. Rees, J.A.

April 3, 1974.

J.A. Wharton, Q.C. and
M. Daly - for the appellants.

T. Hosein, Q.C. and
M. de la Bastide - for the respondent.

30

J U D G M E N T

Delivered by Corbin, J.A.

I agree with the judgement and order proposed by the learned President but as we are differing from the trial judge, I desire to make just a few observations of my own.

In the Court
of Appeal

—
No.32

Judgment of
Corbin, J.A.
3rd April,
1974
(continued)

10 In my opinion the learned trial judge kept fully in mind the principles which should be considered in determining questions relating to infringement of a trade mark and to "passing-off" actions and stated the law correctly. It was submitted, however, that he fell into error in not appreciating that there must be a difference in the approach to a consideration of each action. It seems to me that what the judge was saying in his judgment having regard to the issues between the parties was that the element of deception was common to both actions and in that sense the test to be applied to determine whether this element was present was the same in both. If this is so then the judge made no error in saying what he did.

20 If there is similarity of marks the question of deception and confusion arises in both actions and in that event a test for determining it has to be applied.

In infringement actions the plaintiff relies on a statutory title and alleges that the defendant has infringed it by taking and using his mark in its entirety, or so much of it as to render it confusingly similar to the plaintiffs; in "passing-off" actions the allegation is that the defendant is using means which are calculated to represent falsely to the public that his goods are those of the plaintiff's and this means may be totally unconnected with any mark.

30

The action for infringement is now only used to describe the form of action in which the plaintiff bases his claim on a registered trade mark. It is equally wrong, however, to imitate or copy any of the other features or means by which his products are identified with him. This is what gives rise to the passing-off action. In the case of A.G. Spalding & Bros. v. A.W. Gamage Ltd. (1915) 32 R.P.C. at p. 284 Lord Parker described a passing-off action in this way:

40

"The basis of a passing-off action being a false representation by the defendant, it must be proved in each case as a fact that the false representation was made. It may, of course, have been made in express words, but cases of express misrepresentation of this sort are rare. The more common the

50

In the Court
of Appeal

—
No.32

Judgment of
Corbin J.A.
3rd April,
1974
(continued)

case is, where the representation is implied in the use or imitation of a mark, trade name, or get-up with which the goods of another are associated in the minds of the public, or of a particular class of the public. In such cases the point to be decided is whether, having regard to all the circumstances of the case, the use by the defendant in connection with the goods of the mark, name, or get-up in question impliedly represents such goods to be the goods of the plaintiff, or the goods of the plaintiff of a particular class or quality, or, as it is sometimes put, whether the defendant's use of such mark, name, or get-up is calculated to deceive."

10

Different considerations must, therefore, arise and different tests must usually be applied even though the test to determine deception may be the same. This was the only issue in the instant case.

20

Whether there was evidence or not of deception or confusion it was the duty of the judge in the final analysis to make his own findings on the material before him. In the view that I take, however, he made wrong inferences and drew erroneous conclusions from the facts which he found. This Court is therefore in as good a position as the judge to evaluate the evidence (which was not in dispute) and to substitute its own findings if it disagrees with the judge.

30

The question for determination in an action for passing-off by the use of a mark is whether the resemblance is likely to deceive. The authorities have established firmly that the persons to be considered in deciding this are all of those who are likely to become purchasers provided they use ordinary care and intelligence. Products are frequently remembered rather by general impression than by a particular feature and it is sufficient if deception is likely to arise. It must not be assumed that a very careful or detailed examination will be made, for on a "side by side" comparison such as was made by the trial judge two products may differ materially whereas to the incautions purchaser or to the average casual purchaser the general set up and over-all colour scheme could cause confusion in his mind and lead him to believe that the two products are of the same manufacturer.

40

The evidence here is that the appellants'

50

products have been sold in Trinidad for many many years put up in distinctive containers and boxes. Their main product is toothpaste which is, of course, used by a very wide cross-section of the public. Many will be persons using ordinary care and relying on an overall impression in making their purchases rather than on a careful inspection. Some of them will even be illiterate. The danger of this was pointed out by Lord Selbourne, L.C. in the case of Johnston v. Orr Ewing (1881) 7 A.C. at p.225 where he said:

In the Court of Appeal

—
No.32

Judgment of Corbin J.A. 3rd April, 1974 (continued)

10

20

"But although the mere appearance of these two tickets could not lead anyone to mistake one of them for the other, it might easily happen that they might both be taken by natives of Aden or of India unable to read and understand the English Language, as equally symbolical of the plaintiffs' goods. To such persons, or at least to many of them, even if they took notice of the differences between the two labels, it might probably appear that these were only differences of ornamentation, posture, and other accessories, leaving the distinctive and characteristic symbol substantially unchanged. Such variations might not unreasonably be supposed to have been made by the owners of the plaintiffs' trade-mark themselves for reasons of their own."

30

I think it is logical to infer that many persons may be deceived by a strong similarity in regard to format and colour and that they may even conclude that "Tringate" is really "Colgate" manufactured in Trinidad where it is sold in boxes with such similar characteristics.

40

In my view although the trial judge referred to the average purchaser, he approached the question too much from the point of view of an intellectual purchaser who might think of "gate" as being a "gateway to health" and who would have mental processes which I cannot attribute to the average shopper who is accustomed to picking up a tube of Colgate in the familiar red and white box very often in a great haste.

50

It is not necessary for the appellants to establish an intention on the part of the respondents to deceive and they have not sought to do so, but I find it difficult to avoid the conclusion that the respondents by choosing a word so near to Colgate and a design and colour scheme so similar

In the Court
of Appeal

No.32

Judgment of
Corbin J.A.
3rd April
1974
(continued)

succeeded in conveying the false impression to purchasers that their goods are the product of the appellants. The result was that they placed themselves in the position of being able to capitalise on the appellants' established reputation in the market.

In my judgment the learned trial judge erred in holding that "no deception or confusion would be caused to the eye of the average reasonable person." and that the appellants had not established passing-off.

10

Holding as I have it would follow that the appellants have also established an infringement of their registered trade mark contrary to the provisions of section 5(1) of the Trade Marks Ordinance No. 11 of 1955. They have shown that the respondent has used a mark which was not identical with but which so nearly resembled the appellants' trade mark as was likely to deceive or confuse and to indicate a trade origin of the goods that deceived or confused. Of course, where the mark used is identical there is no need to show deception or confusion.

20

M.A. Corbin
Justice of Appeal

No.33

Judgment of
Rees, J.A.
3rd April,
1974

No.33

JUDGMENT OF REES, J.A.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 10 of 1972

30

Between

COLGATE-PALMOLIVE LTD.

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

Plaintiffs/
Appellants

- and -

KENNETH FREDERICK PATTRON
(Trading as The Caribbean
Daily Need Chemical Works)

Defendant/
Respondent

Coram: Sir Isaac Hyatali, C.J.
M.A. Corbin J.A.
E.A. Rees, J.A.

In the Court
of Appeal

April 3, 1974.

No.33

J.A. Wharton, Q.C. and
M. Daly - for the appellants.

T.Hosein, Q.C. and
M. de la Bastide - for the respondent.

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

J U D G M E N T

10 Delivered by Rees J.A.:

The first appellants, Colgate Palmolive Ltd., a Company incorporated in the Dominion of Canada with a registered office at 64, Colgate Avenue, Toronto were formerly registered in this country under Part X of the Companies Ordinance Cap. 31 No.1. They are the proprietors of two trade marks consisting of the word "Colgate" simpliciter and the word "Colgate" as a label which were registered in the Register of Trade Marks as No. 397 on June 10, 1958 and No. 811 on December 18 1959 respectively, in Class 48 for perfumery including toilet article preparations for the teeth. Trade Mark No. 811 was amended on December 6, 1963. The second appellants, Colgate-Palmolive (Trinidad) Ltd. are a wholly owned subsidiary of the first appellants and were registered under the said Companies Ordinance in July, 1960. The respondent Kenneth Frederick Pattron, trading as "The Caribbean Daily Need Chemical Works" is a manufacturer of and dealer in toothpaste.

"Colgate" is the surname of one of the founders of the well-known Colgate group of Companies and both their trade marks have been extensively used in connection with the first appellants' toothpaste for upwards of 35 years throughout the world. Their toothpaste which is made up in Jamaica and sold locally is of two kinds, ordinary toothpaste and toothpaste treated with a fluoride content. The former is offered for sale in tubes contained in packages on which is printed the word "Colgate" in very distinctive script in white on a red background and the latter is in a tube contained in a red, white and dark blue package with the blue against the white as the predominant

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

theme. On both tube and package are small size reproductions of the first appellants' registered label. The basic colours on the tubes and packages are red, white and blue. In the early part of 1970 the respondent placed on the local market toothpaste in tubes and packages bearing the word "Tringate" printed in white on a red background in a script very similar though not identical with that used by the appellants for the word "Colgate".

10

Thereupon the first appellants issued the writ in these proceedings claiming an injunction to restrain the respondent from infringing their registered trade marks and from passing or assisting others to pass off toothpaste, not their goods by use in connection therewith in the course of trade of the word "Tringate". When sometime after the writ was issued the second appellants were added as plaintiffs, they joined the first appellants in claiming an injunction to restrain the respondent from passing off or assisting others to pass off toothpaste which was not the toothpaste of the appellants. The learned trial judge dismissed the action and ordered an inquiry as to whether the respondent had sustained any and what damages by reason of an injunction to restrain him from infringing the first appellants' registered trade marks which had been ordered on September 28, 1970. From this decision the appellants appealed.

20

30

At the very outset of the hearing of this appeal counsel for the appellants criticised as inaccurate a statement in the judgment to the effect that the test to be applied was the same in a passing-off action as in action for infringement and argued that this caused the trial judge to reach a wrong conclusion. It is not in dispute that the first appellants are the owners of the trade marks "Colgate" as a word and "Colgate" printed in very distinctive script in white on a red background as a label. The main issue therefore before the trial judge was whether the use of the word "Tringate" and the get-up of the package containing the toothpaste constituted an infringement in the sense that it was likely to deceive or cause confusion, or whether for the purposes of the passing-off action having regard to all the circumstances of the case the respondent's use of the said word and get-up was such that it amounted to a false representation that his toothpaste was the toothpaste sold and marketed by the appellants in this country for many years. It was in that

40

50

setting that the learned judge in his judgment said:

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

10 "In all such actions of infringement, the test to be applied is whether the acts of the Defendant are likely to deceive or confuse the public. In the case of a passing-off action involving the use of a mark or the get-up of the goods, the test, where there is no express misrepresentation is whether the use of the mark or the get-up would associate the goods of the Defendant in the minds of the public as the goods of the Plaintiff. To my mind in a passing-off action of the above kind, which is in the nature of the action on the case, the test is the same as for an action of infringement, although the evidence that may be taken into consideration may differ."

20 So understood there was nothing fundamentally wrong about the statement. There is no doubt that an action for infringement and one for passing-off are closely connected. For one thing they both involve a common element of deception but in infringement, the question is whether the marks as such are confusingly similar, whilst in passing-off the question is whether what the defendant has done is confusing or deceptive in the light of the plaintiff's actual reputation. See Kerly's on Trade Marks (10th Edn. 1972) at p.450. Be that
30 as it all may, whatever opinion the trial judge may have expressed in his comparison of the action of infringement with that of passing-off, the real question to be decided in this appeal in the final analysis is whether he arrived at the right conclusion.

40 I propose to deal first with the action of infringement. The section of the Trade Marks Ordinance No.11 of 1955 which is relevant to the matter is sec. 5(1) which is the local counterpart of sec. 4(1) of the English Trade Marks Act 1938. Sec. 5(1) provides:

50 "5.(1) Subject to the provisions of this section and of sections 8 and 12 of this Ordinance the registration of a person in Part A of the register as proprietor of a trade mark other than a certification trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and,

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either -

10

- (a) as being use as a trade mark; or
- (b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade."

20

Applying this section to the present case it will be seen that the registration of the appellant as proprietors of the trade marks, "Colgate" as a word and "Colgate" printed in distinctive script in white on a red background as a label gave them the exclusive right to use the said word and label in relation to toothpaste. It is also to be noted from the section that infringement takes place not only by exact imitation but by the use of a mark so nearly resembling the registered trade mark as to be likely to deceive or cause confusion.

30

The word "Tringate" is not identical with "Colgate" and consequently the appellants in order to succeed in their action for infringement had the burden of proving that the respondent's mark so nearly resembled the first appellants registered trade marks that it was likely to deceive or cause confusion. There was no evidence of actual deception or confusion and counsel for the respondent submitted that there was ample time between the appearance of "Tringate" toothpaste on the local market and the granting of an interim injunction nine months later on September 28, 1970 for the appellants to have obtained oral evidence to that effect and moreso as it was particularly pleaded in para. 8 of their amended statement of claim. But if the trade mark used by the

40

50

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

respondent is on the face of it confusingly similar to the appellants' trade marks I do not see that it is necessary to prove by the sworn testimony of witnesses that purchasers were actually deceived or confused. The absence of evidence of actual deception is admittedly a circumstance to be considered because to have witnesses who are able to give evidence to the satisfaction of the court that they have actually been deceived would afford strong evidence that the resemblance of the mark in question is so close as to be likely to deceive or confuse. But I do not think in the particular circumstances of this case that the only inference to be drawn from the absence of any specific evidence by witnesses is that there has not been or that there is no likelihood of confusion or deception. In the absence of any such witnesses the learned trial judge was himself under a duty to place himself in the position of a potential buyer of toothpaste to consider and contrast visually and with reference to the ear the marks of the appellants and the respondent and give effect to his own opinion as to the likelihood of deception or confusion. That this is the proper approach was made abundantly clear in the very recent case of General Electric Co. v. The General Electric Co. Ltd. (1972) 2 All E.R. 507, where Lord Diplock said at p. 515:

30 "But where goods are sold to the general public for consumption or domestic use, the question whether such buyers would be likely to be deceived or confused by the use of the trade mark is a 'jury question'. By that I mean that if the issue had now, as formerly, to be tried by a jury, who as members of the general public would themselves be potential buyers of the goods, they would be required not only to consider any evidence of other members of the public which had been adduced but also to use their own common sense and to consider whether they would themselves be likely to be deceived or confused.

40

The question does not cease to be a 'jury question' when the issue is tried by a judge alone or on appeal by a plurality of judges. The judge's approach to the question should be the same as that of a jury. He, too would be a potential buyer of the goods. He should, of course, be alert to the danger of allowing his own idiosyncratic knowledge or temperament to influence his decision, but

50

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

the whole of his training in the practice of the law should have accustomed him to this, and this should provide the safety which in the case of a jury is provided by their number. That in issues of this kind judges are entitled to give effect to their own opinions as to the likelihood of deception or confusion and, in doing so, are not confined to the evidence of witnesses called at the trial is well established by decisions of this House itself."

10

This was precisely the approach of the trial judge to the case, because his judgment was based solely on his own opinion as to the likelihood of deception or confusion. He said at p. 124 of the proceedings.

"So far as the action of infringement of the first plaintiff's registered label is concerned, the evidence satisfied me not only that the names "Colgate" and "Tringate" cannot give rise to the likelihood of confusion or deception, either to the eye, or ear but further that although the script in which those names is printed is closely similar in form and both scripts are white, the background to the script is in quite different shades of red. To my mind there is no likelihood of confusion or deception resulting. I therefore do not consider that there has been any infringement of the first Plaintiff's trade mark relating to his label."

20

30

It is suggested by Counsel for the appellants that the reasons given for this conclusion by the learned trial judge show that he took the mark of the respondent and made a side by side comparison judging them by their looks and by their sounds without considering all the other surrounding circumstances. It is obvious that no one seeing the word "Tringate" and the word "Colgate" written side by side would be confused or deceived as they are two different words with differences that would hit the eye; nor do I think that confusion would ordinarily arise from hearing the word "Colgate" or the word "Tringate" in conversation. Nevertheless I am inclined to think that the trial judge made a meticulous comparison of the marks of the appellants and the mark of the respondent, comparing and contrasting them side by side down to the smallest detail. As I see it, in a matter of this kind where similarity is in question the difficulty lies

40

50

not in discovering the physical resemblances and differences of the marks side by side but in determining what general impressions will be formed and retained by the kind of customer who would be likely to buy toothpaste. And who is the kind of customer to buy toothpaste. Practically every person in the community and from shops throughout the length and breadth of the country. In Saville Perfumery Ltd. v. June Perfect Ltd. and Woolworth & Co. Ltd. (1941) 58 R.P.C. at p.161 Sir Wilfred Greene M.R., said:

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

"Ocular comparison is... an important matter to be taken into consideration, in some cases it may be conclusive one way or the other. But if the court were to confine itself to this test the protection afforded by the law of trade marks would in many cases prove illusory. It would be still more illusory if no witness could be listened to who was not prepared to say that when he saw the mark complained of he had in his mind the actual registered mark and made a comparison between the two. Propositions of this kind, if accepted, would, as it appears to me, divorce the law of trade marks from business realities. In the case of certain goods, traders, and perhaps the public too, may be expected to receive so strong an impression of the actual mark as to lead to the conclusion that nothing short of a degree of resemblances apparent to the eye will cause the necessary likelihood of deception. On the other hand, many articles do not fall within this category. In the present case, for example the evidence makes it clear that traders who have to deal with a very large number of marks used in the trade in which they are interested, do not, in practice, and indeed cannot be expected to, carry in their heads the details of any particular mark, while the class of customer among the public which buys the goods does not interest itself in such details. In such cases the mark comes to be remembere by some feature in it which strikes the eye and fixes itself in the recollection. Such a feature is referred to sometimes as the distinguishing feature, sometimes as the essential feature, of the mark."

Another valuable judgment on the matter is de Cordova & Ors. v. Vick Chemical Co., (1958) 68 R.P.C. 103, an action for infringement and passing

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

off which went on appeal from the Court of Appeal in Jamaica to the Privy Council in England. Lord Radcliffe in delivering the judgment of the Board said at p. 105:

"A mark is infringed by another trader if even without using the whole of it upon or in connection with his goods, he uses one or more of its essential features. The identification of an essential feature depends partly on the Court's own judgment and partly on the burden of the evidence that is placed before it. A trade mark is undoubtedly a visual device; but it is well-established law that the ascertainment of an essential feature is not to be by ocular test alone."

10

Later on he said:

"The likelihood of confusion or deception is not disproved by placing two marks side by side and demonstrating how small is the chance of error in any customer who places his order for goods with both the marks clearly before him for orders are not placed, or are often not placed, under such conditions. It is more useful to observe that in most persons the eye is not an accurate recorder of visual detail, and that marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole."

20

30

Those cases clearly indicate that much more is required to be done than merely making a side by side comparison. What the learned judge had to consider was whether the respondent had used in his mark one or more of the essential features of the first appellant's trade marks upon or in connection with "Tringate" toothpaste in such a manner that it was confusingly similar to the registered word and label of the first appellants. The brand name "Colgate" has come to be used and known in this country as distinctive of the first appellants' toothpaste for several years, a word made up of the syllables "Col" and "gate". As I see it a significant detail of the word "Colgate" is the syllable "gate", a well-known English word frequently used by everyone in this English speaking country to signify a means of entrance or exit. The syllable "gate" strikes the eye and fixes itself in the recollection, if for no other

40

50

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

10 reason than the fact that for over 35 years it has
been associated with the toothpaste of the
appellants in this country. Further, although the
appellants expressly disclaimed any proprietary
right to the script the word "Colgate" is written
in a distinctive script in white against a red
background on the package and tube. "Tringate" is
printed in a similar script against a red back-
ground on the respondent's tubes and packages.
It seems to me that the syllable "gate", the
distinctive script and the basic colours were some
of the distinguishing features of the first
appellants registered trade marks and these
features were imitated by the respondent and used
as a mark for his toothpaste.

20 I have no doubt that the average potential
buyer who has known the trade marks "Colgate" as a
word and "Colgate" as a label over the years and
has perhaps an imperfect recollection of what the
nature of the appellants' get-up of a package of
toothpaste was on seeing the word "Tringate"
printed in white in a similar script to the word
"Colgate" against a red background in connection
with toothpaste, would be liable to be deceived or
confused. Such a person would no doubt come to
the conclusion that it was a word invented by the
appellants to describe by the syllable "Trin" that
the toothpaste had some connection with Trinidad
and the syllable "gate" some connection with
30 "Colgate". I am satisfied from my own consider-
ation of the matter that the use by the respondent
of these features I have mentioned made his mark
"Tringate" confusingly similar to that of the
first appellants' registered trade marks and he
thereby committed a breach of sec. 5 of the Trade
Mark Ordinance which amounts to an infringement of
the first appellants' registered trade marks.

40 I turn now to the issue of passing-off.
Although it might well be a matter of indifference
to the appellants whether they obtain an injunction
on this issue seeing that they are entitled to an
injunction on the issue of infringement nevertheless
the issue of passing-off should be determined.
One of the earliest statements as to the foundation
of the common law action of passing-off was made
by James L.J., in Singer Manufacturing Co. v. Loog
(1880) 18 Ch.D. 395. He said at p. 412:

50 "No man, is entitled to represent his goods
as being the goods of another man; and no
man is permitted to use any mark sign or
symbol, device or means, whereby, without

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer. That being, as it appears to me, a comprehensive statement of what the law is upon the question of trade mark or trade designation, I am of opinion that there is no such thing as a monopoly or a property in the nature of a copyright, or in the nature of a patent, in the use of any name. Whatever name is used to designate goods, anybody may use that name to designate goods; always subject to this, that he must not, as I said, make directly or through the medium of another person, a false representation that his goods are the goods of another person."

10

It will be seen from this statement that the essence of the present action is whether or not the respondent represented his toothpaste as the goods of the appellants.

20

The appellants' case, as pleaded in their statement of claim, is that there was a false representation made by the respondent which ought to be implied from his use of the word "Tringate" printed in white on a red background in script lettering closely imitating the distinctive script of the first plaintiff's registered trade mark No. 811 of 1959, in connection with toothpaste not of the manufacture of the appellants. That this could form the basis of a passing-off action is clear from what was said by Lord Parker in A.G. Spalding & Bros. v. A.W. Gamage Ltd. (1915) 32 R.P.C. 273. He said:

30

"The basis of a passing-off action being a false representation by the defendant, it must be proved in each case as a fact that the false representation was made. It may, of course, have been made in express words, but cases of express misrepresentation of this sort are rare. The more common case is where the representation is implied in the use or imitation of a mark, trade name or get-up with which the goods of another are associated in the minds of the public, or of a particular class of the public. In such cases the point to be decided is whether, having regard to all the circumstances of the case, the use by the defendant in connection with the goods of the mark,

40

50

name or get-up in question impliedly represents such goods to be the goods of the plaintiff, or the goods of the plaintiff of a particular class or quality, or as it is sometimes put whether the defendant's use of such mark, name or get-up is calculated to deceive. It would, however, be impossible to enumerate or classify all the possible ways in which a man may make the false representation relied on."

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

10

It seems that the trial judge fully understood the principles to be applied in the matter before him because at the very outset of the judgment he said:

20

"In the case of a passing-off action, involving the use of a mark or the get-up of the goods, the test where there is no express misrepresentation, is whether the use of the mark or the get-up would associate the goods of the defendant (respondent) in the minds of the public as the goods of the plaintiff (appellants)."

Then later:

"In the action of passing-off which is an action of the common law wider in scope than the action of infringement as it is not dependent on a statutory title, the complaint is that the defendant (respondent) is representing his goods as the goods of the plaintiff (appellants)."

30

The trial judge, however, dismissed the action in so far as it was founded on passing-off on the grounds that there was a marked dissimilarity of the name "Colgate" to that of "Tringate" which to the eye or ear cannot be confused. That the first syllables, "Col" and "Trin" of the two words respectively are so far apart that there can be no confusion. That in addition to this distinction between the names "Colgate" and "Tringate" there is

40

- "(a) the marked difference between the colours of the Defendant's package and tube, and the colours used by the Plaintiffs for their various packages and tubes;
- (b) that in those packages and tubes of the plaintiffs where blue is the predominant colour the blue (whatever its shade) is quite distinct from the blue used by the defendant on its package and tube;

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

- (c) that the general arrangement of the colours on the respective packages and tubes is different and even as regards the printing of the brand name in white against red the shade of red is quite different;
- (d) that the general layout of the packages is strikingly dissimilar, the Defendant's package having for example a map in white on a blue circle with the name of the producer in fine print around it whilst the Plaintiffs' has not." 10

And that no confusion or deception can be caused to the eye or ear of the average reasonable person. Whether the evidence which the judge had at his disposal was enough or not to justify the allegation of the appellants is essentially a question of fact. That this is so is amply supported by Lord Halsbury L.C. in Reddaway v. Banham 13 R.P.C.218, an action to restrain passing-off where he said at p. 224; 20

"My Lords, I believe in this case that the question turns upon a question of fact. The question of law is so constantly mixed up with the various questions of fact which arise on an inquiry of the character in which your Lordships have been engaged, that it is sometimes difficult when examining former decisions to disentangle what is decided as fact, and what is laid down as a principle of law. For myself I believe the principle of law may be very plainly stated, and that is that nobody has any right to represent his goods as the goods of somebody else. 30

How far the use of particular words, signs or pictures does or does not come up to the proposition which I have enunciated in each particular case, must always be a question of evidence, and the more simple the phraseology, the more like it is to a mere description of the article sold, the greater becomes the difficulty of proof, but, if the proof establishes the fact, the legal consequence appears to follow." 40

It has been said that whether the use of particular words or badges is calculated to pass off the defendant's goods as those of the plaintiff is usually one of difficulty. The present case to my mind is no exception to that general statement 50

because for one thing there were no witnesses called by the appellants to give evidence of actual deception. Anyway it is clear from the authorities that the question whether one mark so nearly resembles another as to be likely to deceive or cause confusion is a question of fact for the court and therefore sitting as one of a plurality of judges and a potential buyer of toothpaste I am entitled to give effect to my own opinion as to the likelihood of deception or confusion arising, although I must in doing so bear in mind that I should not allow my own idiosyncratic knowledge or temperament to influence by decision.

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

The learned trial judge quite rightly found as a fact that for many years the appellants had extensively used their trade marks in connection with their toothpaste. There is no dispute that these marks had become distinctive of the appellants' toothpaste and had been identified with it in the local market for several years. Toothpaste being an article used by nearly every member of the community it is to be expected that some of the potential buyers of this article would know well the appellants' marks whereas others would have an imperfect recollection of them. Further, it must be remembered that it is not likely that "Colgate" toothpaste and "Tringate" toothpaste would always be found on the shelves of a shop lying side by side when exposed for sale. Consequently, the learned judge in considering whether there is a likelihood of deception or confusion in the particular circumstances of the present case ought to have borne in mind the observations made in several authorities to the effect that due regard should be paid to these potential customers of imperfect recollection. Thus in Re: an application by Rysta Ltd. (1943) 1 All E.R. 400, Luxmore L.J. said at p. 407 that:

"...obviously a person who is familiar with both words will not be deceived nor confused. It is the person who only knows the one word, and has perhaps an imperfect recollection of it who is likely to be deceived or confused."

And in Re: Peddie's Application (1944) 61 R.P.C.31 where it was said that all the surrounding circumstances must be considered in comparing two words and that the words must be considered not merely when they are placed side by side but from the viewpoint of a person who may have seen or heard of one of the marks and then with a more or less imperfect recollection of that mark, comes

In the Court
of Appeal

—
No. 33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

across the other. In any case in a passing-off as the present one based as it is on indirect misrepresentation, it is not to be expected that a defendant would adopt or imitate every part of the marks or get-up of the plaintiff. It seems more likely that he would attempt a covert and skilful allusion to the goods he intends to copy or imitate.

Bearing these considerations in mind in the present case I think the essential feature of the appellants' mark is the word "Colgate". It is printed in a very distinctive script in white on a red background and as I said before comprised of the syllables "Col" and "gate". The word "Tringate" is comprised of two syllables, "Trin" and "gate". The common denominator of both words is the syllable "gate" which for over 35 years has been associated with the toothpaste of the appellant in the word "Colgate", a name well-known in connection with toothpaste in this country. As a potential buyer of toothpaste I should say that "Trin" means Trinidad and "gate" when associated with toothpaste had something to do with "Colgate" toothpaste. When to this is added the fact that the basic colours of the packages are the same, that is, red, white and blue although of different shades, that "Tringate" is printed in white in the distinctive script of "Colgate" and against a red background, I think there is a real probability of "Tringate" toothpaste being regarded as in some way associated with the appellants' toothpaste by potential purchasers of an imperfect recollection. I have no hesitation in finding that the respondent by adopting the word "Tringate" and the general get-up of the tube and packages for his toothpaste was using means which were calculated to represent falsely to the public that his toothpaste was toothpaste of the appellants. For these reasons I would grant the injunction sought.

But it was contended by Counsel for the respondent that if we are of a different view from the trial judge on the facts of the case, as his decision was based purely on a question of fact this court as an appellate court ought not to reverse that decision unless we find that he has misdirected himself or the judgment is so unreasonable that it ought not to be allowed to stand. The House of Lords had occasion to consider a similar contention in the case of Benmax v. Austin Motor Co., Ltd., (1955) 1 All E.R. 326. In that

10

20

30

40

50

case Viscount Simonds in his speech first referred to the cases of Montgomerie & Co., Ltd. v. Wallace James (1904) A.C. 73 and Mersey Docks & Harbour Board v. Procter (1923) A.C. 253. The combined effect of those two decisions was that in cases where the credibility of witnesses does not come into question but the concern is as to the proper inferences to be drawn from truthful evidence then the original tribunal is in no better position to decide than the judges of the appellate court and the latter may draw its own inferences from the facts proved or admitted. Viscount Simonds went on to say that those decisions were consonant with R.S.C. 0.58 r.1 (U.K.) which prescribes

In the Court
of Appeal

—
No.33

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

10

"All appeals to the Court of Appeal shall be by way of rehearing"

and r.4 of the same Order which reads:

20

"The Court of Appeal shall have power to draw inferences of fact and to give judgment and make any order which ought to have been made"

This situation is specifically provided for in Trinidad by 0.60 rr.1 - 4 of the R.S.C.(T) which are identical with 0.58 rr.1 - 4 (U.K.).

30

As I see it the proper attitude which this court should adopt in the circumstances of the present case is that which has been so concisely defined by Lord Reid in the same case of Benmax v. Austin Motor Co., Ltd. (supra). He said at p.329.

"But in cases where there is no question of the credibility or reliability of any witness, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal court is generally in as good a position to evaluate the evidence as the trial judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion."

40

In the instant case there is no question of the credibility of witnesses. The sole question is the proper inferences to be drawn from specific facts. I have fully considered the matter and I think that the trial judge formed the wrong views by inference from the evidence which was available. As I am in as good a position to evaluate that evidence as he was and as I think that this is a

In the Court
of Appeal

clear case of passing-off I would allow the appeal
and grant the injunction sought.

No.33

E.A. Rees

Judgment of
Rees, J.A.
3rd April,
1974
(continued)

Justice of Appeal

No.34

No.34

Order granting
Final Leave
to Appeal
to Her Majesty
in Counsel
3rd March
1975

ORDER GRANTING FINAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNSEL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.10 of 1972

10

Between

KENNETH FREDERICK PATTRON
(Trading as THE CARIBBEAN
DAILY NEED CHEMICAL WORKS)

Defendant/
Respondent

- and -

COLGATE PALMOLIVE LIMITED
COLGATE PALMOLIVE (TRINIDAD)
LIMITED

Plaintiffs/
Appellants

Entered on the 10th day of March, 1975

On the 3rd day of March, 1975

20

Before the Honourable Mr. Justice Isaac Hyatali,
President
Mr. Justice Clement Phillips
Mr. Justice Maurice Corbin

UPON MOTION made unto this Court this day by
Counsel for the above-named Defendant/Respondent
for an Order granting the said defendant/respondent
final leave to appeal to Her Majesty in Council as
against the Judgment of the Court of Appeal dated
the 3rd day of April, 1974, and Upon Reading the
said Notice of Motion dated the 23rd day of July,
1974 the affidavits of Carlyle Bharath sworn the
22nd day of July, 1974 and 16th day of December,
1974, together with the exhibit therein referred to,
all filed herein, And Upon Hearing Counsel for the

30

defendant/respondent in the presence of Counsel
for the plaintiffs/appellants.

In the Court
of Appeal

THIS COURT DOTH ORDER

That final leave be and the same is hereby
granted to the said defendant/respondent to appeal
to Her Majesty in Council against the said Judgment
and the costs of this motion be costs in the cause.

—
No.34
Order granting
Final Leave
to Appeal
to Her Majesty
in Council
3rd March
1975
(continued)

Sd. D. BAIJU.....

Ag. Asst. - Registrar.

Exhibits

G.R.8
Letter, J.D.
Sellier & Co.
to Mr.
Ramkerrysingh
11th August
1967

EXHIBITS

EXHIBIT G.R.8. LETTER , J.D.
SELLIER & CO. to MR. RAMKERRYSINGH

J.D.SELLIER & CO.,

13 St. Vincent Street

SOLICITORS, CONVEYANCERS
AND NOTARIES PUBLIC

Port of Spain

AND NOTARIES PUBLIC

TRINIDAD

10

R.M. SELLIER (Not Pub.)

C.C. THOMSON (not Pub.)

F.R.L. POWER

J.E. BOUCAUD Please Address

V.H. STOLLMEYER P.O. Box 116.

A.R. SELLIER

D.J. BOUCAUD.

Cable Address

"TAGUS-TRINIDAD"

Our Ref. ARS:bl

20

11th August, 1967

Mr. Ramkerrysingh,

Mr. Ramkerrysingh,

34 De Verteuil Street,

Woodbrook

Dear Sir,

Re: Sale Distribution of Golden Gate,
Triangle, Diamond, Dental Creams

We act on behalf of Messrs. Colgate-Palmolive
(Trinidad) (Limited), who are the distributors in
Trinidad of the product Colgate Dental Cream.

30

It has come to our clients' notice that you have been selling throughout Trinidad the above mentioned Dental Creams each of which is sold in a package which is an obvious copy of our clients' own package, the latter being the subject of a registered Trade Mark.

10 Unless you satisfy our clients within seven days from the date hereof that these products have been withdrawn from the market our instructions are to commence legal proceedings against you.

Yours faithfully,

cc: Colgate Palmolive (Trinidad) Ltd.

Exhibits

G.R.8
Letter, J.D.
Sellier & Co.
to Mr.
Ramkerrysingh
11th August
1967
(continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICES

NOVEMBER 1968

NATIONAL

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>
Previous 4/67	98.0	77.2	91.6	87.9	91.6
11/67	100.0	100.0	97.2	86.9	93.8
5/68	97.3	96.0	89.3	77.1	87.6
Current 11/68	98.7	98.0	90.0	80.7	89.6

BRAND SHARE

Previous 4/67	87.6	-	1.4	-	4.3	2.9	1.8	.6	-	1.4
11/67	76.0	-	3.8	-	6.6	7.0	3.0	1.7	-	1.9
5/68	75.5	-	4.3	4.0	3.0	8.5	2.1	.9	.2	1.5
Current 11/68	79.6	4.2	.4	2.9	1.9	7.4	1.9	.4	-	1.3

<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Other</u>	<u>Base</u>
A & B	63.1	8.4	2.4	13.1	4.8	6.0	-	1.1	-	1.1	84
C	80.6	4.9	-	1.9	1.9	5.8	3.9	-	-	1.0	103
D	85.8	.7	-	.7	.7	8.6	1.4	.7	-	1.4	140
E	82.6	4.7	-	-	1.3	8.1	2.0	-	-	1.3	149
TOTAL	79.6	4.2	.4	2.9	1.9	7.4	1.9	.4	-	1.3	476

Exhibit 151
 Market Research, November, 1968

Exhibit 151
 Market Research, November 1968

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICE

NOVEMBER 1968

PORT OF SPAIN

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>
Previous 5/68	100.0	95.1	90.2	76.3	89.5
Current 11/68	98.0	97.5	90.2	86.4	92.5

BRAND SHARE

Previous 11/67	66.4	-	5.4	-	10.8	9.1	2.9	3.3	2.1
5/68	73.9	-	.5	5.5	5.1	8.5	2.5	1.5	2.5
Current 11/68	71.6	6.5	.5	5.5	4.0	7.5	1.5	1.0	1.9

<u>BRAND SHARE</u>	<u>Colgate D.Cream</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
A & B	59.6	8.7	1.8	15.8	2.0	3.5	-	1.8	1.8	57
C	74.4	7.0	-	4.7	2.3	9.3	2.3	-	-	43
D	83.0	-	-	-	2.1	8.6	2.1	2.1	2.1	47
E	72.2	9.3	-	-	3.7	9.3	1.8	-	3.7	54
TOTAL	71.6	6.5	.5	5.5	4.0	7.5	1.5	1.0	1.9	201

123.

Market Research, November 1968

Exhibit 131

Exhibits
 ISI
 Market
 Research,
 November, 1968
 (continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1968

SAN FERNANDO

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>				
Previous 5/68	88.2	100.0	85.7	85.4	88.3				
Current 11/68	100.0	100.0	88.1	73.2	86.7				
<u>BRAND SHARE</u>									
Previous 11/67	86.0	-	3.1	-	3.1	3.9	.8	.8	2.3
5/68	64.6	-	14.1	2.6	3.5	12.4	1.8	-	1.0
Current 11/68	80.9	2.7	-	1.8	.9	11.0	1.8	-	.9

<u>BRAND SHARE</u>	<u>Colgate D.Cream</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
A & B	66.7	5.5	-	11.1	-	16.7	-	-	-	18
C	68.3	4.5	-	-	4.5	9.1	9.1	-	4.5	22
D	90.0	-	-	-	-	10.0	-	-	-	40
E	86.7	3.3	-	-	-	10.0	-	-	-	30
TOTAL	80.9	2.7	-	1.8	.9	11.0	1.8	-	.9	110

Market Research, November 1968

Exhibit ISI

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1968

ARIMA

<u>INCIDENCE</u>		<u>A & B</u>		<u>C</u>		<u>D</u>		<u>E</u>		<u>TOTAL</u>
Previous 5/68		100.0		100.0		70.0		80.0		83.3
Current 11/68		100.0		100.0		90.0		70.0		86.7
<u>BRAND SHARE</u>										
Previous 11/67	71.7	-	7.5	-	5.7	9.4	1.9			3.8
5/68	69.3	-	11.6	3.8	-	3.8	7.7			3.8
Current 11/68	88.9	3.7	3.7	-	-	-	3.7			-

<u>BRAND SHARE</u>	<u>Colgate D.Cream</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Other</u>	<u>Base</u>
A & B	66.7	-	33.3	-	-	-	-	-	3
C	100.0	-	-	-	-	-	-	-	7
D	80.0	10.0	-	-	-	-	10.0	-	10
E	100.0	-	-	-	-	-	-	-	7
TOTAL	88.9	3.7	3.7	-	-	-	3.7	-	27

Market Research, November 1968

Exhibit IS1

125.

Exhibits
IS1
Market
Research,
November, 1968
(continued)

ExhibitsISI
Market
Research,
November, 1968
(continued)Market Research, November 1968
Exhibit ISICOLGATE-PALMOLIVE (TRINIDAD) LIMITEDMARKET RESEARCHDENTIFRICENOVEMBER 1968TACARIGUA

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>
Previous 5/68	100.0	91.7	95.5	76.7	87.1
Current 11/68	100.0	100.0	91.0	90.0	92.9

BRAND SHARE

Previous 11/67	75.0	-	-	7.7	11.5	5.8	-	-	-
5/68	88.7	-	3.2	-	4.9	-	1.6	1.6	-
Current 11/68	85.3	3.0	1.4	-	5.9	3.0	-	-	1.4

<u>BRAND SHARE</u>	<u>Colgate D.Cream</u>	<u>Ultra Brite</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Other</u>	<u>Base</u>
A & B	83.3	16.7	-	-	-	-	-	-	-	6
C	83.4	8.3	-	-	-	8.3	-	-	-	12
D	80.9	-	4.8	-	9.5	-	-	-	4.8	21
E	89.7	-	-	-	6.9	3.4	-	-	-	29
TOTAL	85.3	3.0	1.4	-	5.9	3.0	-	-	1.4	68

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1968

CARONI

<u>INCIDENCE</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>
Previous 5/68	95.0	96.0	68.6	83.8
Current 11/68	95.0	91.7	75.0	85.0

<u>BRAND SHARE</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>			
Previous 11/67	88.9	-	1.0	-	1.0		
5/68	88.6	-	-	2.9	-	-	
Current 11/68	19.4	1.4	-	-	5.8	1.4	-

<u>BRAND SHARE</u>	<u>Colgate D.Cream</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
C	100.0	-	-	-	-	-	-	-	-	19
D	90.9	-	-	-	-	9.1	-	-	-	22
E	86.2	3.4	-	-	-	7.0	3.4	-	-	29
TOTAL	91.4	1.4	-	-	-	5.8	1.4	-	-	70

Market Research, November 1968

Exhibit ISI

127.

Exhibits
ISI
Market
Research,
November 1968
(continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

MAY 1969

NATIONAL

<u>INCIDENCE</u>	<u>A & B</u>		<u>C</u>		<u>D</u>		<u>E</u>		<u>TOTAL</u>		
Previous /64											90.7
/65											92.8
/66											90.6
4/67	98.0		77.2		91.6		87.9				91.6
11/67	100.0		100.0		97.2		86.9				93.8
5/68	97.3		96.0		89.3		77.1				87.6
11/68	98.7		98.0		90.0		80.7				89.6
Current 5/69	99.3		98.5		85.6		-				95.0
<u>BRAND SHARE</u>											
Previous /64	87.5	-	1.9	-	-	1.5	3.1	1.7	-	-	7.6
/65	88.7	-	3.0	-	-	3.2	1.9	1.5	-	-	3.1
/66	87.6	-	1.9	-	3.0	3.5	1.7	1.8	-	-	2.2
4/67	87.6	-	1.4	-	4.3	2.9	1.8	.6	-	-	1.4
11/67	76.0	-	3.8	-	6.6	7.0	3.0	1.7	-	-	1.9
5/68	75.5	-	4.3	4.0	3.0	8.5	2.1	.9	.2	-	1.5
11/68	79.6	4.2	.4	2.9	1.9	7.4	1.9	.4	-	-	1.3
Current 5/69	79.2	2.9	.4	4.3	2.9	7.0	1.9	.4	-	-	1.0
<u>BRAND SHARE</u>	<u>C.O.C.</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Other</u>	<u>Base</u>
A & B	70.3	4.6	1.1	8.6	6.8	4.6	1.7	-	-	2.3	175
C	80.6	2.9	-	2.9	.9	8.5	2.9	.9	-	.4	211
D	89.0	.8	-	.8	.8	7.8	.8	-	-	-	128
TOTAL	79.2	2.9	.4	4.3	2.9	7.0	1.9	.4	-	1.0	514

1 SHARE POINT = \$9,780 US
 (US dollars valued at \$2.00 TT)

Market Research, May 1969

Exhibit IS2

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

CITY

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>
Previous 5/68	100.0	95.1	90.2	76.3	89.6
11/68	98.0	97.5	90.2	86.4	92.5
Current 5/69	98.9	97.3	74.3	-	94.0

<u>BRAND SHARE</u>	<u>C.D.C.</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Other</u>	<u>Base</u>
Previous 11/67	66.6	-	5.4	-	10.8	9.1	2.9	3.3	-	-	2.1
5/68	73.9	-	.5	5.5	5.1	8.5	2.5	1.5	-	-	2.5
11/68	71.6	6.5	.5	5.5	4.0	7.5	1.5	1.0	-	-	1.9
Current 5/69	75.4	3.3	.9	4.7	6.6	5.2	2.4	.5	-	-	1.0

<u>BRAND SHARE</u>	<u>C.D.C.</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Other</u>	<u>Base</u>
A & B	92.2	3.7	1.9	5.6	10.3	4.7	2.8	-	-	1.8	107
C	81.6	2.6	-	3.9	2.6	6.6	1.3	1.4	-	-	76
D	82.0	3.6	-	3.6	3.6	3.6	3.6	-	-	-	28
TOTAL	75.4	3.3	.9	4.7	6.6	5.2	2.4	.5	-	1.0	211

LS:cag
9/6/69

Exhibits
IS2
Market
Research,
May 1969
(continued)

Market Research, May 1969

Exhibit IS2

Exhibit
 IS2
 Market
 Research,
 May 1969
 (continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

MAY 1969

RURAL

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
Current 5/69	100.0	99.2	89.2	95.7

BRAND SHARE

Current 5.69	81.8	2.6	-	4.0	.3	8.3	1.6	.4	1.0
--------------	------	-----	---	-----	----	-----	-----	----	-----

<u>BRAND SHARE</u>	<u>C.D.C.</u>	<u>Ultra- Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
A & B	72.1	5.9	-	13.2	1.5	4.4	-	-	2.9	68
C	80.1	3.0	-	2.2	-	9.6	3.7	.7	.7	135
D	91.0	-	-	-	-	9.0	-	-	-	100
<u>TOTAL</u>	81.8	2.6	-	4.0	.3	8.3	1.6	.4	1.0	303

9/6/69

Market Research, May 1969

Exhibit IS2

131.

Exhibit E.B.5.

Letter, Deputy Registrar General to
T.M. Kelshall & Co.

TRINIDAD AND TOBAGO

REGISTRAR GENERAL'S OFFICE

RED HOUSE

PORT-OF-SPAIN

26th September, 1969

Exhibits

E.B.5
Letter,
Deputy
Registrar
General to
T.M. Kelshall
& Co.
26th September
1969

Sir,

10 Re: Trade Mark TRINGATE and Device

I REFER TO YOUR APPLICATION No. 5336 dated 25th February, 1969 for the registration of Part /A of the Register of Trade Marks of the Word/ Device in Class 47 in respect of Candles, common soap, detergents, illuminating heating or lubricating oils, matches and starch, blue and other preparations for laundry purposes and wish to inform you that your application has been accepted, subject to the following conditions:

20 That the applicants disclaim any right to the exclusive use of the representation of the "map of Trinidad".

Rosamund E. Farrell

2nd Deputy Registrar General.

Messrs. T.M. Kelshall & Co.,
11 St. Vincent Street
Port of Spain.

132.

Exhibits

Exhibit E.B.6

E.B.6
Letter,
Deputy
Registrar
General to
T.M. Kelshall
& Co.
26th September
1969

Letter, Deputy Registrar General to
T.M. Kelshall & Co.

TRINIDAD AND TOBAGO

REGISTRAR GENERAL'S OFFICE

RED HOUSE

PORT OF SPAIN

26th September, 1969

Sir,

Re: Trade Mark TRINGATE and Device

10

I REFER TO YOUR APPLICATION No.5335 dated
25th February, 1969 for the registration of Part
/A of the Register of Trade Marks of the Word/
Device in Class 3 in respect of Chemical substances
prepared for use in medicine and pharmacy and
wish to inform you that your application has been
accepted, subject to the following conditions:

That the applicants disclaim any right to the
exclusive use of the "map of Trinidad"

Rosamund E. Farrell

20

2nd Deputy Registrar General.

Messrs. T.M. Kelshall & Co.,
11 St. Vincent Street,
Port of Spain.

COLGATE PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1969

NATIONAL

INCIDENCE

INCIDENCE

Previous /64

/65

/66

4/67

11/67

5/68

11/68

5/69

Current 11/69

A & B

C

D

E

TOTAL

90.7

92.8

90.6

91.6

93.8

87.6

89.6

89.6

95.0

100.0

96.0

88.7

-

/BRAND SHARE

133.

Exhibit IS3

Market Research, November, 1969

Exhibits

IS3
Market
Research,
November, 1969

<u>TOTAL</u>	75.0	4.6	.4	3.2	2.3	9.2	2.5	.1	-	2.7	524
--------------	------	-----	----	-----	-----	-----	-----	----	---	-----	-----

LS: jkt

December 1969 1 SHARE POINT = \$9,780 US

(US dollar valued = \$2.00TT)

COLGATE PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1969

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>	<u>CITY</u>
Previous 5/68	100.0	95.1	90.2	76.3	89.6	
11/68	98.0	97.5	90.2	86.4	92.5	
5/69	98.9	97.3	74.3	-	94.0	
Current 11/69	100.0	98.7	85.7	-	97.0	

BRAND/

Exhibit IS2

Market Research, November, 1969

Exhibits

IS3
Market
Research,
November, 1969
(continued)

Exhibits

IS3
Market
Research,
November, 1969
(continued)

Exhibit IS3

Market Research, November, 1969

BRAND SHARE

Previous 11/67	66.6	-	5.4	-	10.8	9.1	2.9	3.3	2.1
5/68	73.9	-	.5	5.5	5.1	8.5	2.5	1.5	2.5
11/68	71.6	6.5	.5	5.5	4.0	7.5	1.5	1.0	1.9
5/69	75.4	3.3	.9	4.7	6.6	5.2	2.4	.5	1.0
Current 11/69	67.4	6.0	.9	4.6	5.0	8.7	3.2	-	4.2

<u>BRAND SHARE</u>	<u>BASE</u>	<u>Ultra Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
A & B	56.1	7.5	-	9.3	7.5	11.2	3.7	-	4.7	107
C	79.7	2.5	2.5	-	2.5	5.1	2.5	-	5.2	79
D	75.0	9.4	-	-	3.1	9.4	3.1	-	-	32
<u>TOTAL</u>	67.4	6.0	.9	4.6	5.0	8.7	3.2	-	4.2	218

LS;jkt
December 4, 1969

COLGATE/

COLGATE PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

DENTIFRICE

NOVEMBER 1969

RURAL

<u>INCIDENCE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
Previous 5/69	100.0	99.2	89.2	95.7
Current 11/69	100.0	94.4	89.6	93.7

<u>BRAND SHARE</u>	<u>A & B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
Previous 5/69	81.8	2.5	4.0	1.0
Current 1/69	80.4	3.6	2.3	1.6

<u>BRAND SHARE</u>	<u>C.D.C.</u>	<u>Ultra Brite</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Other</u>	<u>Base</u>
A & B	68.6	7.1	7.1	-	11.4	1.5	-	4.3	70
C	81.1	3.1	1.6	.8	9.4	1.6	.8	1.6	127
D	87.2	1.8	-	-	8.3	2.7	-	-	109
<u>TOTAL</u>	<u>80.4</u>	<u>3.6</u>	<u>2.3</u>	<u>.3</u>	<u>9.5</u>	<u>2.0</u>	<u>.3</u>	<u>1.6</u>	<u>306</u>

December 4, 1969

137.
Exhibit IS3
 Market Research, November, 1969

Exhibits
 IS3
 Market Research, November, 1969
 (continued)

ExhibitsExhibit G.R.3

G.R.3.
Letter,
Colgate-
Palmolive
(Trinidad)
Ltd. to.
Mr. Mohammed
17th June
1970

Letter, Colgate-Palmolive (Trinidad) Ltd. to
Mr. Mohammed

TRINIDAD

CHURCHILL ROOSEVELT HIGHWAY

TEL: 638-2265, 2266, 2267

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

DIRECTORS: O. EARL SENIOR, MANAGING,
G.H. LIESCH

(U.S.A.) V.H. STOLLMEYER.

10

P.O. BOX 661, PORT-OF-SPAIN, TRINIDAD, WEST
INDIES.

CABLES "PALMOLIVE"

June 17, 1970

Dear Mr. Mohammed,

Re: Trinidad-Colgate Registration

We have to draw your attention to the fact that you are offering for sale to the public under the trade name TRINGATE Toothpaste manufactured by the Caribbean Daily Need Chemical Works.

20

Our parent Company Colgate-Palmolive is the registered proprietor of trade marks No.397 COLGATE (Word) and No. 811 COLGATE (Label) in respect of (inter alia) toothpaste. We have been advised that the use of TRINGATE is an infringement of our parent Company's said registered trade marks. In order to protect the reputation of our COLGATE Toothpaste we must call upon you immediately to remove from display or sale to the public all supplies of Tringate Toothpaste.

30

Unless you give us your undertaking within seven (7) days from the date of this letter to cease all sales of TRINGATE Toothpaste and let us have satisfactory evidence of this, we shall be forced to take such measures as may be necessary for the protection of our legal rights.

Kind regards.

Sincerely,

COLGATE-PALMOLIVE (TRINIDAD)
LIMITED

40

N.K. SHIM MARKETING MANAGER

NKS:jkt

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICE
JUNE 1970

NATIONAL

<u>INCIDENCE</u>		<u>A & B</u>		<u>C</u>		<u>D</u>		<u>E</u>		<u>TOTAL</u>	
Previous	/64										90.7
	/65										92.8
	/66										90.6
	4/67	98.0		77.2		91.6		87.9			91.6
	11/67	100.0		100.0		97.2		86.9			93.8
	5/68	97.3		96.0		89.3		77.1			87.6
	11/68	98.7		98.0		90.0		80.0			89.6
	5/69	99.3		98.5		85.6		-			95.0
	11/69	100.0		96.0		88.7		-			95.0
Current	6/70	98.0		96.5		88.0		-			94.4

<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kalydos</u>	<u>Mac-Cleans</u>	<u>Other</u>	<u>Base</u>
A & B	67.3	3.2	3.8	7.5	5.0	6.3	1.9	.6	.6	1.9	1.9	159
C	76.3	4.4	1.0	4.8	2.4	7.7	1.9	.5	.5	.5	.5	207
D	86.0	.8	.7	-	.7	7.4	.7	-	.7	3.0	3.0	136
TOTAL	76.1	3.0	1.8	4.4	2.8	7.2	1.6	.3	.2	1.8	1.6	502

Market Research, June 1970

Exhibit I.S.4

139.

Exhibits
I.S.4
Market
Research,
June 1970

Exhibits
 I.S.4
 Market
 Research,
 June 1970
 (continued)

National Cont'd

Dentifrice Market Research

	<u>CDC</u>	<u>Ultra- Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Plain</u>	<u>Crest Mint</u>	<u>Pepsodent</u>	<u>Forhana</u>	<u>Listerine</u>	<u>Kolyne</u>	<u>Mec- Cleans</u>	<u>Other</u>	<u>Total</u>
<u>SIZE</u>												
Super	3.0	-	-	-	-	-	-	-	-	-	-	2.2
Family	17.4	40.0	-	-	27.3	22.2	-	-	-	-	-	17.2
Economy	9.7	-	-	6.6	13.6	2.8	-	-	-	-	12.5	8.6
Large	32.3	40.0	66.7	46.7	31.8	44.4	100.0	50.0	100.0	40.0	50.0	36.0
Standard	31.6	20.0	33.3	46.7	27.3	27.8	-	50.0	-	63.0	25.0	31.0
Medium	6.0	-	-	-	-	2.8	-	-	-	-	12.5	5.0

Market Research, June 1970

Exhibit I.S.4

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICE
JUNE 1970

												<u>CITY</u>
<u>INCIDENCE</u>		<u>A & B</u>		<u>C</u>		<u>D</u>		<u>E</u>		<u>TOTAL</u>		
Previous	5/68	100.0		95.1		90.2		76.3		89.6		
	11/68	98.0		97.5		90.2		86.4		92.5		
	5/69	98.9		97.3		74.3		-		94.0		
	11/69	100.0		98.7		85.7		-		97.0		
Current	6/70	98.0		98.2		77.8		-		94.1		
<u>BRAND SHARE</u>		<u>A & B</u>		<u>C</u>		<u>D</u>		<u>E</u>		<u>TOTAL</u>		
Previous	11/67	66.6	5.4	10.8	9.1	2.9	3.3	-	-	2.1		
	5/68	73.9	.5	5.5	5.1	8.5	2.5	1.5	-	-	2.5	
	11/68	71.6	6.5	5.5	4.0	7.5	1.5	1.0	-	-	1.9	
	5/69	75.4	3.3	4.7	6.6	5.2	2.4	.5	-	-	1.0	
	11/69	67.4	6.0	4.6	5.0	8.7	3.2	-	-	-	4.2	
Current	6/70	72.6	2.9	2.2	5.8	3.6	6.8	1.1	.7	.4	1.4	2.5
<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra-Brite</u>	<u>Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Ma-cleans</u>	<u>Other</u>	<u>Base</u>
A & B	66.4	2.7	3.6	8.2	5.5	6.4	.9	.9	.9	1.8	2.7	110
C	75.6	4.1	1.6	5.7	3.3	5.7	1.6	.8	-	.8	.8	123
D	79.6	-	-	-	-	11.4	-	-	-	2.2	6.8	44
TOTAL	72.6	2.9	2.2	5.8	3.6	6.8	1.1	.7	.4	1.4	2.5	277
<u>SIZE</u>												<u>Total</u>
Super	3.7	-	-	-	-	-	-	-	-	-	-	2.7
Family	19.1	50.0	-	31.2	-	26.3	-	-	-	-	-	18.8
Economy	10.7	-	-	12.5	9.1	5.3	-	-	-	-	14.3	9.6
Large	31.2	25.0	66.7	31.3	27.3	42.1	100.0	50.0	100.0	25.0	57.1	33.9
Standard	29.3	25.0	33.3	25.0	63.6	21.0	-	50.0	-	75.0	14.3	29.8
Medium	6.0	-	-	-	-	5.3	-	-	-	-	14.3	5.2

Market Research, June 1970

Exhibit L.S.4

141.

Exhibits

L.S.4
 Market
 Research,
 June 1970
 (continued)

Exhibits
 L.S.4
 Market
 Research,
 June 1970
 (continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRIDE

JUNE 1970

RURAL

<u>INCIDENCE</u>		<u>A & B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>							
Previous	5/69	100.0	99.2	89.2	95.7							
	11/69	100.0	94.4	89.6	93.7							
Current	6/70	98.0	94.2	93.8	94.8							
<u>BRAND SHARE</u>												
Previous	5/69	81.8	2.6	-	4.0	.3	8.3	1.6	.4	-	-	1.0
	11/69	80.4	3.6	-	2.3	.3	9.5	2.0	.3	-	-	1.6
Current	6/70	80.4	3.1	1.3	2.7	1.8	7.6	2.2	-	-	.5	.4

<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra- Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Ma- cleans</u>	<u>Other</u>	<u>Base</u>
A & B	69.4	4.1	4.1	6.1	4.1	6.1	4.0	-	-	2.1	-	49
C	77.4	4.7	-	3.6	1.2	10.7	2.4	-	-	-	-	84
D	80.1	1.1	1.1	-	1.1	5.4	1.1	-	-	-	1.1	92
TOTAL	80.4	3.1	1.3	2.7	1.8	7.6	2.2	-	-	.5	.4	225
<u>SIZE</u>												<u>Total</u>
Super	2.1	-	-	-	-	-	-	-	-	-	-	1.7
Family	15.5	28.6	-	16.7	-	17.6	-	-	-	-	-	15.1
Economy	8.6	-	-	16.7	-	-	-	-	-	-	-	7.4
Large	33.7	57.1	66.7	33.3	100.0	47.1	100.0	-	-	100.0	-	38.5
Standard	34.2	14.3	33.3	33.3	-	35.3	-	-	-	-	100.0	32.5
Medium	5.9	-	-	-	-	-	-	-	-	-	-	4.8

Market Research, June 1970

Exhibit L.S.4

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICE

INCIDENCE	DECEMBER 1970										NATIONAL TOTAL
	A & B	C	D	E							
Previous /64											90.7
/65											92.8
/66											90.6
4/67	98.0		77.2		91.6		87.9				91.6
11/67	100.0		100.0		97.2		86.9				93.8
5/68	97.3		96.0		89.3		77.1				87.6
11/68	98.7		98.0		90.0		80.0				89.6
5/69	99.3		98.5		85.6		-				95.0
11/69	100.0		96.0		88.7		-				95.0
6/70	98.0		96.5		88.0		-				94.4
Current 12/70	89.6		96.7		92.2		84.6				94.5
<u>BRAND SHARE</u>											
Previous /64	87.5	-	1.9	-	-	1.5	3.1	1.7	-	-	7.6
/65	88.7	-	3.0	-	-	3.2	1.9	1.5	-	-	3.1
/66	87.6	-	1.9	-	3.0	3.5	1.7	1.8	-	-	2.2
4/67	87.6	-	1.4	-	4.3	2.9	1.8	.6	-	-	1.4
11/67	76.0	-	3.8	-	6.6	7.0	3.0	1.7	-	-	1.9
5/68	75.5	-	4.3	4.0	3.0	8.5	2.1	.9	.2	-	1.5
11/68	79.6	4.2	.4	2.9	1.9	7.4	1.9	.4	-	-	1.3
5/69	79.2	2.9	.4	4.3	2.9	7.0	1.9	.4	-	-	1.0
11/69	75.0	4.6	.4	3.2	2.3	9.2	2.5	.1	-	-	2.7
6/70	76.1	3.0	1.8		2.8	2.2	1.4	.3	.2	1.0	1.6
Current 12/70	74.6	4.3	.8	1.8	3.7	9.7	-	-	-	-	5.1

BRAND SHARE	CDC	Ultra- Brite	Colgate Fluoride	Crest Mint	Crest Plain	Pepsodent	Forchans	Listerine	Kolynns	Ma- leans	Other	Base
A & B	63.9	7.0	2.2	2.2	9.1	9.1	-	-	-	-	6.5	230
C	76.6	3.1	.6	2.2	2.5	11.0	-	-	-	-	4.0	320
D	78.4	3.3	-	1.4	.5	10.3	-	-	-	-	6.1	213
E	89.6	4.5	-	-	1.5	2.9	-	-	-	-	1.5	67
TOTAL	74.6	4.3	.8	1.8	3.7	9.7	-	-	-	-	5.1	830

....2

Market Research, December 1970

Exhibit U.S.5

145.

Exhibits
I.S.5
Market
Research,
December, 1970

Exhibits

U.S. 5
Market
Research,
December, 1970
(continued)

Market Research, December 1970

Exhibit U.S. 5

144.

National Cont'd.

Dentifrice Market Research

	<u>COC</u>	<u>Ultra- Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Ma- cleans</u>	<u>Other</u>	<u>Total</u>
<u>SIZE</u>												
Super	2.5	-	-	-	-	-	-	-	-	-	-	1.8
Family	17.9	30.0	-	20.0	-	19.5	-	-	-	-	-	17.0
Economy	10.8	-	-	46.7	10.0	3.6	-	-	-	-	9.5	10.1
Large	34.6	60.0	42.8	33.3	42.5	42.3	-	-	-	-	60.0	38.0
Standard	29.8	10.0	57.2	-	47.5	29.8	-	-	-	-	15.1	26.6
Medium	4.4	-	-	-	-	4.8	-	-	-	-	15.4	4.5

May 1, 1971.

COLGATE-PALMOLIVE (TRINIDAD) LIMITED
MARKET RESEARCH
DENTIFRICE
DECEMBER 1970

<u>INCIDENCE</u>												<u>CITY</u>
		<u>A & B</u>	<u>C</u>		<u>D</u>		<u>E</u>				<u>TOTAL</u>	
Previous	5/68	100.0	95.1		90.2		76.3				89.6	
	11/68	98.0	97.5		90.2		86.4				92.5	
	5/69	98.0	97.3		74.3		-				94.0	
	11/69	100.0	98.7		85.7		-				97.0	
	6/70	98.0	98.2		77.8		-				94.1	
Current	12/70	97.2	95.8		90.3		86.7				94.1	
<u>BRAND SHARE</u>												
Previous	11/67	66.6	-	5.4	-	10.8	9.1	2.9	3.3	-	-	2.1
	5/68	73.9	-	.5	5.5	5.1	8.5	2.5	1.5	-	-	2.5
	11/68	71.6	6.5	.5	5.5	4.0	7.5	1.5	1.0	-	-	1.9
	5/69	75.4	3.3	.9	4.7	6.6	5.2	2.4	.5	-	-	1.0
	11/69	67.4	6.0	.9	4.6	5.0	8.7	3.2	-	-	-	4.2
	6/70	72.6	2.9	2.2	5.8	3.6	6.8	1.1	.7	.4	1.4	2.5
Current	12/70	71.8	5.0	1.0	2.1	4.6	9.6	-	-	-	-	5.9
<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Mac-leans</u>	<u>Other</u>	<u>Base</u>
A & B	65.2	8.1	2.5	1.2	9.3	8.1	-	-	-	-	5.6	161
C	73.7	4.0	.5	2.9	3.4	10.9	-	-	-	-	4.6	175
D	71.6	3.9	-	2.9	-	11.8	-	-	-	-	9.8	102
E	90.0	-	-	-	2.5	5.0	-	-	-	-	2.5	40
TOTAL	71.8	5.0	1.0	2.1	4.6	9.6	-	-	-	-	5.9	478

May 1, 1971

Exhibits
 L.S. 5
 Market
 Research,
 December, 1970
 (continued)

Market Research, December 1970

Exhibit L.S. 2

Exhibits

L.S.5

Market Research, December, 1970
(continued)

COLGATE-PALMOLIVE (TRINIDAD) LIMITED

MARKET RESEARCH

TOOTH PASTE

DECEMBER 1970

RURAL

<u>INCIDENCE</u>		<u>A & B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>TOTAL</u>						
Previous	5/69	100.0	99.2	89.2	-	95.7						
	11/69	100.0	94.4	89.6	-	93.7						
	6/70	98.0	94.2	93.8	-	94.8						
Current	12/70	98.3	97.8	93.9	81.8	95.0						
<u>BRAND SHARE</u>												
Previous	5/69	81.8	2.6	-	4.0	.3	8.3	1.6	.4	-	-	1.0
	11/69	80.4	3.6	-	2.3	.3	9.5	2.0	.3	-	-	1.6
	6/70	80.4	3.1	1.3	2.7	1.8	7.6	2.2	-	-	.5	.4
Current	12/70	78.4	3.4	.6	1.4	2.6	9.7	-	-	-	-	3.9

<u>BRAND SHARE</u>	<u>CDC</u>	<u>Ultra-Brite</u>	<u>Colgate Fluoride</u>	<u>Crest Mint</u>	<u>Crest Plain</u>	<u>Pepsodent</u>	<u>Forhans</u>	<u>Listerine</u>	<u>Kolynos</u>	<u>Macleans</u>	<u>Other</u>	<u>Base</u>
A & B	60.9	4.3	1.5	4.3	8.7	11.6	-	-	-	-	8.7	69
C	80.0	2.1	.7	1.4	1.4	11.0	-	-	-	-	3.4	145
D	84.7	2.7	-	-	.9	9.0	-	-	-	-	2.7	111
E	88.9	11.1	-	-	-	-	-	-	-	-	-	27
TOTAL	78.4	3.4	.6	1.4	2.6	9.7	-	-	-	-	3.9	352

May 1, 1971

Market Research, December 1970

Exhibit L.S.5

COLGATE-PALMOLIVE (T'DAD) LTD.
MARKET RESEARCH

DECEMBER 1970

DENTIFRICE

OTHER BRANDS USED WITHIN LAST THREE MONTHS

<u>BRANDS</u>	<u>PRESENT BRAND</u>								<u>NO OTHER</u>
<u>CITY</u>	<u>IN HOME</u>	<u>COLGATE</u>	<u>ULTRA-BRITE</u>	<u>COLGATE FLUORIDE</u>	<u>CREST REGULAR</u>	<u>CREST-MINT</u>	<u>PEPSODENT</u>	<u>OTHER BRANDS</u>	<u>USED</u>
COLGATE	343	-	.3	.3	1.2	.3	4.4	3.2	90.7
ULTRABRITE	24	16.7	-	4.2	-	-	4.2	4.2	70.8
COLGATE FLUORIDE	5	-	-	-	-	-	-	-	100.0
CREST REGULAR	22	13.6	-	-	-	-	4.5	4.5	77.3
CREST-MINT	10	30.0	-	-	-	-	-	-	70.0
PEPSODENT	46	37.0	-	4.3	6.5	2.2	-	2.2	47.8
OTHER BRANDS	28	25.0	-	-	-	3.6	-	-	71.4
<u>RURAL</u>									
COLGATE	276	-	1.1	.4	1.1	1.1	47.1	1.8	90.9
ULTRABRITE	12	-	-	8.3	-	-	8.3	-	83.4
COLGATE FLUORIDE	2	-	-	-	50.0	-	-	-	50.0
CREST REGULAR	9	22.2	-	-	-	-	11.1	-	66.7
CREST-MINT	5	40.0	-	-	-	-	-	-	60.0
PEPSODENT	34	47.1	5.9	-	8.8	5.9	-	-	50.0
OTHER BRANDS	14	21.4	-	-	7.1	7.1	-	-	71.4
<u>COMBINED</u>									
COLGATE	619	-	.6	.3	1.1	.6	4.5	2.6	90.8
ULTRABRITE	36	11.1	-	5.6	-	-	5.6	2.8	75.0
COLGATE FLUORIDE	7	-	-	-	14.3	-	-	-	85.7
CREST REGULAR	31	16.1	-	-	-	-	6.4	3.3	74.2
CREST-MINT	15	33.3	-	-	-	-	-	-	66.7
PEPSODENT	80	41.2	2.5	2.5	7.5	3.7	-	1.2	48.8
OTHER BRANDS	42	23.8	-	-	2.4	4.8	-	-	71.4

147.

Exhibits

Market Research, December 1970

Exhibits

I.S.5

Market
Research,
December, 1970
(continued)

Exhibits
I.S.6
Questionnaire,
Colgate
Palmolive
(Trinidad) Ltd.
June 1971

TRINIDAD PANTRY CHECK

JUNE 1971

NAME: _____

ADDRESS: _____

POS	ARIMA	TACARIGUA	CARONI	S.F'DD	T'GO

A&B	C	D

OCCUPATION OF MAIN WAGE EARNER: _____

1. TOILET SOAP

NONE ()

	<u>PO</u>	<u>PO</u>	<u>PO</u>	<u>SPREE</u>	<u>SPREE</u>	<u>C.B.</u>	<u>LUX</u>	<u>LUX</u>	<u>LUX</u>	<u>L/BUDY</u>	<u>WRC</u>	<u>LINDA</u>	<u>OTHER</u>	<u>OTHER</u>
COLOUR:														
SIZE: FAM.	()	()	()	()	()	()	()	()	()	()	()	()	()	()
BATH	()	()	()	()	()	()	()	()	()	()	()	()	()	()
REG.	()	()	()	()	()	()	()	()	()	()	()	()	()	()

2. DENTIFRICE

NONE ()

	<u>C.D.C.</u>	<u>Ultra BRITE</u>	<u>COL. FLUORIDE</u>	<u>CREST REG.</u>	<u>CREST PLAIN</u>	<u>PEPSODENT</u>	<u>OTHER</u>	<u>OTHER</u>
SIZE: SUPER	()	()	()	()	()	()	()	()
FAM.	()	()	()	()	()	()	()	()
ECON.	()	()	()	()	()	()	()	()
STD.	()	()	()	()	()	()	()	()
MED.	()	()	()	()	()	()	()	()

Questionnaire, Colgate Palmolive (Trinidad) Ltd.

Exhibit I.S.6

3. SCOURING CLEANSER

NONE ()

	<u>AJAX</u>	<u>VIM</u>	<u>OTHER</u>	<u>OTHER</u>
SIZE: KING	()	()	()	()
LARGE	()	()	()	()
MEDIUM	()	()	()	()

4. LIQUID BLEACH

NONE ()

	<u>AJAX</u>	<u>CLOROX</u>	<u>KLENE</u>	<u>SIFTA</u>	<u>OTHER</u>	<u>OTHER</u>
SIZE QUART:	()	()	()	()	()	()
PINT	()	()	()	()	()	()
SMALL	()	()	()	()	()	()
GALLON	()	()	()	()	()	()
½ GALLON	()	()	()	()	()	()

5. POWDERED DETERGENT

NONE ()

	<u>FAB.</u>	<u>A.L.D.</u>	<u>A.L.D./ENJAX</u>	<u>BREEZE</u>	<u>DRIVE</u>	<u>TIDE</u>	<u>BRITE</u>	<u>OTHER</u>	<u>OTHER</u>
SIZE: KING	()	()	()	()	()	()	()	()	()
GIANT	()	()	()	()	()	()	()	()	()
LARGE	()	()	()	()	()	()	()	()	()
MED.	()	()	()	()	()	()	()	()	()
SMALL	()	()	()	()	()	()	()	()	()

5a. Have you used any of the following brands of detergents within the last 3 months? (omit brand in home)

FAB A.L.D. AJAX/ENJAX BREEZE DRIVE TIDE BRITE LUX DASH

5b Why have you changed from _____?

Questionnaire, Colgate Palmolive (Trinidad) Ltd.

Exhibit I.S.6

149.

Exhibits

I.S.6

Questionnaire,
Colgate
Palmolive
(Trinidad) Ltd.
June 1971
(continued)

Exhibits

I.S.6

Questionnaire,

Colgate Palmolive (Trinidad) Ltd. June 1971 (continued)

Questionnaire, Colgate Palmolive (Trinidad) Ltd.

Exhibit I.S.6

6. TOOTHBRUSHES

NONE ()

	<u>COLGATE</u>	<u>TEX</u>	<u>WISDOM*</u>	<u>ETERNA</u>	<u>NYLON 202</u>	<u>OTHER</u>	<u>OTHER</u>	<u>OTHER</u>
ADULT	()	()	()	()	()	()	()	()
JUNIOR	()	()	()	()	()	()	()	()

7. PERSONAL DEODORANTS

NONE ()

<u>SPREE</u>	<u>YARDLEY</u>	<u>LADY B</u>	<u>LORD B</u>	<u>MUM</u>	<u>ODD-RO-NO</u>	<u>DRYAD</u>	<u>MISTER</u>	<u>NOXEMA</u>
()	()	()	()	()	()	()	()	()
<u>ARID</u>	<u>RIGHT GUARD</u>	<u>LIMACOL</u>	<u>OTHER</u>	<u>OTHER</u>	<u>OTHER</u>	<u>OTHER</u>		
()	()	()	()	()	()	()		

8. HAIRDRESSINGS & POMADES

NONE ()

<u>VOS</u>	<u>LANALOL</u>	<u>BRYLCREAM</u>	<u>OZON</u>	<u>VASELINE H.T.</u>	<u>VASELINE HAIR CREAM</u>	<u>WAVES</u>
()	()	()	()	()	()	()
<u>WAVERLINE</u>	<u>HAIR GLO</u>	<u>LA INDIA</u>	<u>PIXIE</u>	<u>OTHER</u>	<u>OTHER</u>	<u>OTHER</u>
()	()	()	()	()	()	()

9. Do you listen to radio serials (stories) ?

YES () NO () If YES: Which ones ?

<u>Serial</u>	<u>R.T.</u>	<u>R.G.</u>	<u>Serial</u>	<u>R.T.</u>	<u>R.G.</u>
_____	()	()	_____	()	()
_____	()	()	_____	()	()

		1955	56	57	58	59	60	61	62
COLGATE DENTAL CREAM									
SALES	Wgt.								
Units - Doz.									
Super	8.7	-	-	-	-	-	-	-	-
Fam.	6.47	-	-	-	2353	3071	3785	4208	5931
Econ.	4.83	-	-	-	7298	5402	4999	4681	6287
Lge.	2.70	-	-	-	23046	19199	23919	30782	29192
Std.	1.66	-	-	-	53765	123238	129366	25627	152908
Med.	.72	-	-	-	42827	38231	41200	37802	43922
Conv.	1.76								
Dollars T.T.		287,683	452,551	619,466	671,288	627,993	745,643	729,729	910,323
Adv.									
Media		-	-	-	-	-	-	-	-
Prom		-	-	-	-	-	-	-	-
Oth		-	-	-	-	-	-	-	-
TOTAL		9,479	10,170	29,095	25,815	24,594	38,283	40,697	48,632

Sales Sheet, 1955 - 1971

Exhibit G.R.1

151.

Exhibits
G.R.1.
Sales Sheet,
1955 - 1971

		1963	64	65	66	67	68	69	70	71
COLGATE DENTAL CREAM										
SALES	Wgt.									
Units - Doz.										
Super	8.7	-	-	-	-	-	1124	2214	2575	-
Fam.	6.47	6955	8217	8055	8341	10334	11014	7868	12854	
Econ.	4.83	8077	7135	8586	9531	9601	10227	10514	9969	
Lge.	2.70	32476	42926	51260	58000	53375	58637	57814	63373	
Std.	1.66	155514	156213	148647	177105	170460	155732	196352	141025	
Med.	.72	56629	47803	45969	48911	41928	35423	28078	22644	
Conv.	1.76					323962	357016	356425	326794	331000
Dollars T.T.		956,858	995,473	1,041,344	1,278,576	1,335,348	1,634,000	1,634,000	1,464,000	1,624,000
Adv.										
Media			21515	25452	28285	40016	36619	44000	52000	58000
Prom.			42288	38964	39663	47411	62189	74000	84000	80000
Oth			4066	2564	6808	3261	1619	-	-	-
TOTAL		50,374	67,869	66,980	74,756	90,688	100,427	118,000	136,000	138,000

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

KENNETH FREDERICK PATTRON
(Trading as "THE CARIBBEAN DAILY
NEED CHEMICAL WORKS")

Appellant
(Defendant)

- and -

COLGATE PALMOLIVE LIMITED
COLGATE PALMOLIVE (TRINIDAD) LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

Philip Conway Thomas & Co.,
61 Catherine Place
~~WILSON-FREEMAN,~~
~~6/8 Westminster Palace Gardens,~~
~~Artillery Row,~~
London, SW1E ~~1RE~~ 6 HB

Solicitors for the Appellant.

SLAUGHTER AND MAY,
35 Basinghall Street,
London, EC2V 5DB.

Solicitors for the Respondents.