

BRANDING AND TRADEMARKS IN MARKETING TEXTILE, APPARELS AND LIFESTYLES: CASE STUDIES

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BRANDS, TM AND MARKETING

“Business enterprise has two basic functions: marketing and innovation. Marketing and innovation produce results; all the rest are costs.”

Peter Drucker, Management Visionary

- ✓ IP HAS A ROLE IN BOTH MARKETING AND INNOVATION, TRADEMARKS IS OF MAJOR SIGNIFICANCE IN MARKETING.
- ✓ TO DISTINGUISH BETWEEN COMPETING PRODUCTS, THE PRODUCERS HAVE TO CREATE A DISTINCTIVE IDENTITY AND REPUTATION AND TRADEMARK IS THE TOOL THAT CREATES THE LINK BETWEEN THE PRODUCER AND THE PRODUCT.

- ✓ TRADE MARKS ALSO PROVIDE AN ESSENTIAL FOCUS THAT ALLOWS THE COMPANY TO CHANNEL ADVERTISING AND OTHER FORMS OF MARKET PROMOTION.
- ✓ FROM THE PERSPECTIVE OF A NEWLY ESTABLISHED COMPANY, THE USE OF TRADE MARKS SIGNALS THE COMPANY'S INTENT TO BECOME A PERMANENT FIXTURE IN THE MARKET, AND ONE THAT AIMS TO MEET THE NEEDS OF ITS CONSUMERS.
- ✓ EVERY BUSINESS WANTS TO CREATE A EMOTIONAL RELATIONSHIP WITH THE CONSUMER BY CREATING AND MAINTAINING THE REPUTATION AND IMAGE OF ITS MARK.

MARKETING

CREATING, DELIVERING, MANAGING, AND EVALUATING BRAND MESSAGES WHICH ARE THE INFORMATION AND EXPERIENCES THAT IMPACT HOW A BRAND IS PERCEIVED. THAT IS THE TOTAL OF ACTIVITIES INVOLVED IN THE TRANSFER OF GOODS OR SERVICES FROM THE PRODUCER OR SELLER TO THE CONSUMER OR BUYER.

Functional Areas Of Marketing:

- Advertising
- Customer Service
- Direct Marketing
- Sales Promotion
- Events & Sponsorships
- Packaging



WHAT IS A BRAND?



BRANDS

Brand is a perception resulting from experiences with, and information about, a company or line of products.

- ✓ An asset
- ✓ A guarantee of quality
- ✓ A Relationship between the source of the brand and the consumers

Brand is a **marketing concept** while trademark is a **legal concept**.

- ✓ the power of a brand is inversely proportional to its scope
- ✓ a brand becomes stronger when you narrow its focus
- ✓ the creation of a brand is generally through publicity and rarely through advertising, though advertising plays an important role in the growth of a brand
- ✓ Quality is important but is not the sole element that creates a brand
- ✓ Changing of brands shall be done very carefully
- ✓ No brand lives forever

BRANDING

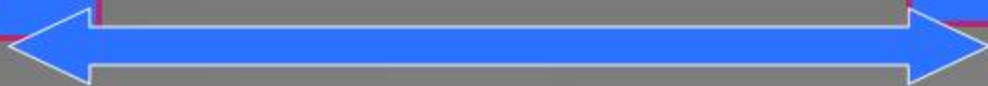
The process of creating a brand image that engages the hearts and minds of customers.

3 steps in the creation of a brand:

- Determining the desired Brand Position
- Developing Brand Identification
- Creating Brand Image

Brand non-
recognition

Brand insistence



Brand recognition Brand acceptance Brand Preference Brand insistence

Creation of brand image

- Personal experience;
- Word of mouth;
- Packaging;
- Point of sale display; and
- Advertising

TRADEMARKS

- A trademark is any word, symbol, device, or combination of these, used by a manufacturer or a merchant, to identify goods and to distinguish them from goods of another.
- Trademarks help consumers to identify the products they wish to purchase.
- Trademarks reduce the cost of shopping and simplify the making of purchasing decisions.
- A trademark is normally made up of:
Words, Letters, Numerals, Pictures, Shapes, Colors, Labels
- Trademark Registration helps a brand owner to protect proprietary rights in relation to a brand name.
- Registered trademarks increase the marketing power of the products and also allows, particularly in cases of textiles, for safeguarding of authenticity.

The SAP logo consists of the letters 'SAP' in white, bold, sans-serif font, set against a dark blue parallelogram background.

LOUIS VUITTON

The PHILIPS logo features the word 'PHILIPS' in a bold, blue, sans-serif font.The IKEA logo features the word 'IKEA' in a bold, yellow, sans-serif font.The NOKIA logo features the word 'NOKIA' in a bold, blue, sans-serif font.

Mercedes-Benz

The GUCCI logo features the word 'GUCCI' in a gold, serif font, set against a dark brown rectangular background.The L'ORÉAL logo features the word 'L'ORÉAL' in a white, sans-serif font, set against a black rectangular background.The SIEMENS logo features the word 'SIEMENS' in a bold, teal, sans-serif font.

FASHION BRANDS IN THE TOP 100 BRANDS

2008 Rank	2007 Rank	Brand	Country of Origin	2008 Brand Value
16	17		France	21,602
22	New		Sweden	13,840
29	29		United States	12,627
45	46		Italy	8254
62	64		Spain	5955
70	69		Germany	5072
77	61		United States	4357
91	94		Italy	3585
94	New		Italy	3526

TEXTILE BRANDING

Levi Strauss was a leader in branding in the clothing sector in the 70s and 80s.

Whereas Levi's epitomises quality and durability, other brands like Wrangler targeted the Country therefore selling lifestyles.

DuPont brands Stainmaster, Coolmax, and Kevlar made others realise that associating a Trademark with a good marketing program is a way to pull consumers.

Regional Branding:

Is the creation of an industrial concentration in one area of specialization in which the country/region has world renowned expertise.

Examples: France, Italy have established textile brand images as producers as well as designers of high-quality fashion textiles.

Advantages of Textile Branding

For the customer

- ✓ Offers assurances regarding the quality;
- ✓ It reassures about a function or an aesthetic such as comfort, performance in use, handle etc.
- ✓ also give consumers benchmarks for their purchase decisions.

For example, Gore-tex® has become a reference brand for waterproof breathable clothing against which other branded or unbranded products are compared.

Advantages of Textile Branding

For the textile manufacturer:

- ✓ give manufacturers control and leverage over their distribution channels;
- ✓ increase profit margins; and
- ✓ create customer loyalty throughout the supply chain

Examples:

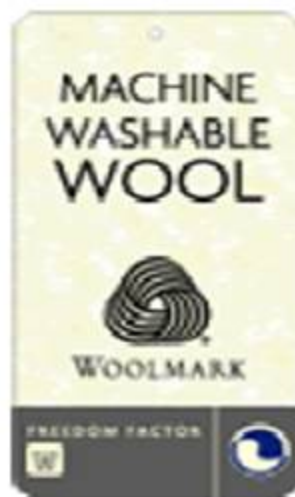
Tencel® retains its substantially higher price than other viscose though prices have gone down.

Tactel® was priced 25% higher than other nylon fibres at the time of launch in 1980. It still enjoys a 20% premium over nonbranded fibres.

Advantages of Textile Branding

Strong brands may also allow a company to expand its product range on the back of the initial brand, however it should be done carefully. For instance “Woolmark” with its portfolio of wool brands e.g. Easycare wool, Machine washable wool, Sportwool.

Examples of Woolmark “Sub-brands”



Textile Branding

Trade brands:

Are generally promoted to the users at the next level at trade fairs. For example, yarn suppliers market their products to weavers and knitters via yarn fairs and trade advertising. No direct consumer promotion.

Consumer brands:

These are promoted through consumer advertising and are more expensive to maintain than trade brands. For instance, Woolmark has focused its efforts on pulling demand through the supply chain by creating consumer interest and demand for wool products.

APPAREL BRANDING

WHY BRANDING IS NECESSARY?

- In the global market, building brands helps in increasing the value of the products.
- To sustain in the consumer market, a strong brand is essential to be created.
- A reputed brand besides being a style statement for a consumer also provides something more such as quality assurance.
- The status, goodwill and reputation associated with the brand helps in promoting the goods among brand conscious customers.

LIFESTYLE BRANDS

A lifestyle brand often indicates a particular section of the society defining the identity of a group or culture. Such a brand is a complement to the identity of an individual which allows one to connect with the brand.

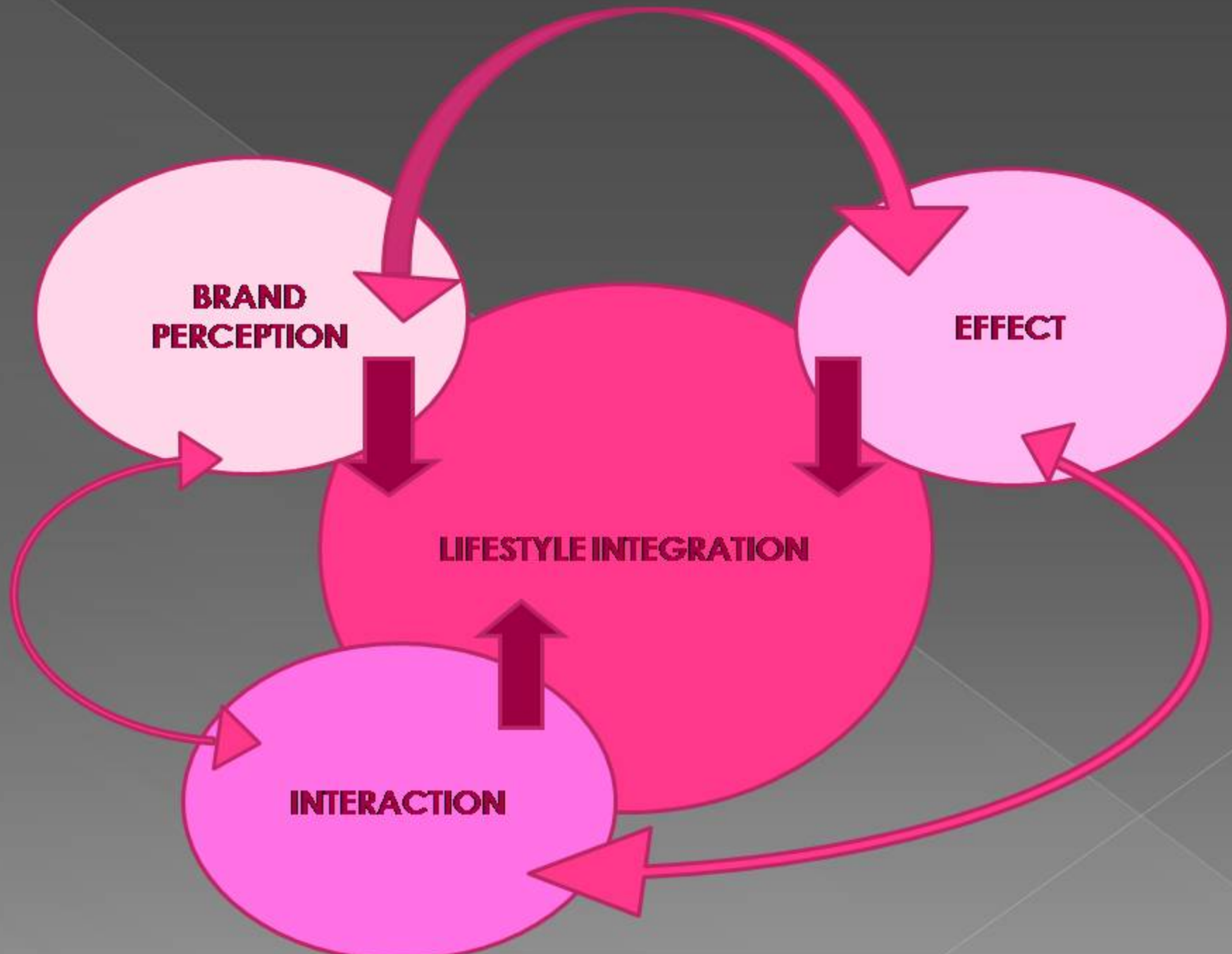
EXAMPLES: NIKE , WRANGLER, ED BANGER.

**BRAND
PERCEPTION**

EFFECT

LIFESTYLE INTEGRATION

INTERACTION



Brands are more than goodwill, it also includes elements such as image and reputation.

Neither the Indian law nor the English law protect brands as such. They protect goodwill (via passing off) and trademarks(via the law of trademark infringement).

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEVI STRAUSS & CO.,
Plaintiff/Counterdefendant,

v.

ABERCROMBIE & FITCH TRADING CO.,
Defendant/Counterclaimant.

Case No. C 07-03752 JSW

ABERCROMBIE & FITCH TRADING CO.,
Defendant/Counterclaimant,

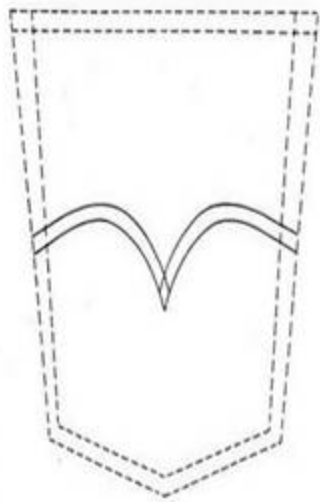
v.

LEVI STRAUSS & CO.,
Plaintiff/Counterdefendant.

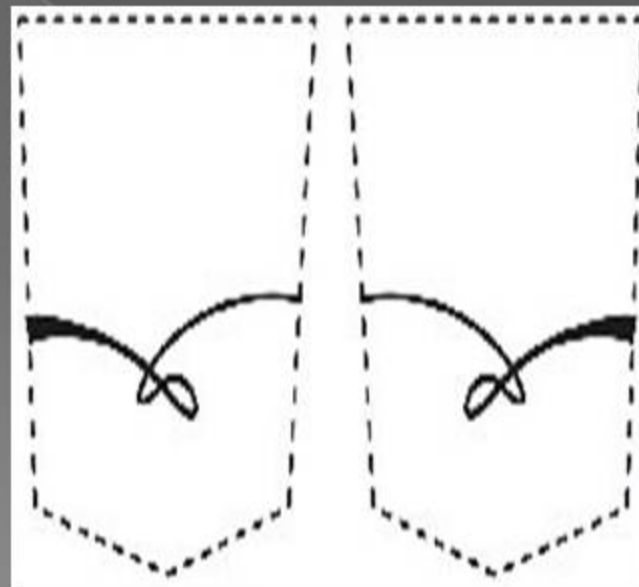
Defendant Abercrombie & Fitch Trading Co. ("A&F") has moved for summary judgment on all of plaintiff Levi Strauss & Co.'s ("LS&CO.") claims.

The motion required A&F to establish that there is no evidence from which a jury might draw a fair inference

- (i) that A&F's Ruehl pocket stitching design is likely to be confusing with LS&CO.'s 135 year old Arcuate Trademark, or
- (ii) That the Ruehl stitching design will likely dilute the Arcuate Trademark.



Arcuate Trademark



Ruehl pocket

Although there were possibilities for confusion at point of sale, this case was also about post-sale confusion. LS&CO. claims that consumers will see women wearing Ruehl jeans with the infringing stitching design and will be confused as to the source of the jeans. In all of its discussion *A&F nowhere mentioned or analyzed post-sale confusion issues.* This omission foretold that A&F is fully aware there is no basis for determining that likely post-sale confusion is lacking as a matter of law.

It is well-settled that the Lanham Act applies not just to confusion among purchasers of a product, but also to confusion among consumers who view the product in a post-sale context. This application of the Act is particularly important in the case of design marks on apparel. **While such marks are important to reinforcing a consumer's positive brand association at the point of sale, their primary purpose is to identify brands for consumers in the post-sale environment, when exterior labeling or branding is often removed or obscured. Certainly this is true of the Arcuate Trademark, which serves as a "walking advertisement" for the LEVI'S® brand.**

Held:

1. The Arcuate Trademark Is Famous

2. The Ruehl Stitching Design Creates A Likelihood Of Dilution

Under the TDRA, an owner of a famous mark is entitled to injunctive relief when a another person “commences use of a mark or trade name in Commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.” 15 U.S.C. § 1125(c)(1).

The TDRA defines dilution by blurring as “association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.” 15 U.S.C. § 1125(c)(2)(B).

Decided on the basis of these factors:

(a) **The Degree Of Similarity Supports A Finding of Dilution-** LS&CO.'s Arcuate Trademark and the Ruehl design are not identical, but as discussed earlier, they are quite similar and certainly similar enough to cause confusion between the two designs.

(b) **The Arcuate Trademark Is An Inherently Distinctive Mark**

(c) Intent Of A&F To Create An Association With The Famous Mark

Consumers sufficiently associate the designs that they are likely to be confused. This evidence also supports LS&CO.'s likelihood of dilution claim. Consumer confusion would create a risk that the value and distinctiveness of a brand would be eroded. If consumers mistakenly identify a jean as produced by LS&CO. but later discover their mistake, they no longer will trust the Arcuate Trademark to signify a LEVI'S® jean. To the extent that confusion affects LS&CO's goodwill or sales *it may reduce or impair positive associations of the Arcuate mark.* If consumers are confused, the benefits of LS&CO.'s advertising and promotion of its mark likely will be diverted in part to A&F precisely because consumers associate the marks with each other.

In its own motion for partial summary judgment, LS&CO. submitted extensive evidence concerning the fame of the Arcuate Trademark. This evidence also establishes that the mark is exceptionally strong. The Arcuate Trademark is recognized by consumers in vast numbers, and is associated with the LEVI'S® brand.

The Overall Impression Of The Two Designs Is Similar

A&F dissects the two stitching designs in an attempt to argue that they are "wholly dissimilar."

Any such side-by-side comparison ignores the governing legal authorities, which hold that the proper question is whether the designs create the same overall commercial impression. Similarities are weighed more heavily than differences, particularly on like products.

Applying these standards, and as the survey results reflect, the overall impression of the two stitching designs is similar. Both appear in the same place on identical products

The district court in the ***Lois Sportswear litigation*** granted summary judgment for LS&CO. on its claims of infringement of the Arcuate Trademark, and elaborated on the importance of post-sale confusion:

Post-sale confusion may diminish the goodwill and sales power created by the Levi arcuate in that it might cause potential purchasers viewing a pair of Levi's from the distance to enter a store and buy Lois jeans, believing them to be what they had seen, or a Levi's customer to decide against buying Levi's based on his appraisal of Lois jeans, believing them to be the same. Because the mark is consistently visible to the purchasing public as a constant advertisement of the product on which an evaluation of it is affixed, the similarity of the marks in a post-sale setting must be taken into consideration.

In ***Levi Strauss & Co. v. Blue Bell, Inc.***, 632 F.2d 817 (9th Cir. 1980), LS&CO. challenged Wrangler's use on the bottom of its jeans pockets of a protruding tab that infringed LS&CO.'s Tab Trademark. The Ninth Circuit rejected Wrangler's arguments based on consumer confusion at the point of sale, holding, "Wrangler's use of its projecting label is likely to cause confusion among prospective purchasers who carry even an imperfect recollection of [LS&CO.'s] mark and who observe Wrangler's projecting label after the point of sale."

INDIAN CASES ON PASSING OFF/TRADEMARK INFRINGEMENT

Dunhill Trademark
Polo trademark

MANU/DE/0201/1997

Decided on: 01.03.1997

Appellants: **Alfred Dunhill Limited**

Vs.

Respondents: **Kartar Singh Makkar and others.**

FACTS:

- The plaintiff is a highly reputed company engaged in the business including manufacturing and marketing a wide variety of goods including readymade garments and other textile articles under the trade mark 'DUNHILL'.
- The trade mark 'DUNHILL' has been in wide use throughout the world and has acquired global reputation.
- The defendants are engaged in the business of manufacturing and marketing textile articles.
- Sometime in 1990: Plaintiff received a notification that its application for registering the trademark with respect to textiles was opposed by the defendant.

- The defendant claimed proprietorship and user of the same trademark DUNHILL since May 21, 1986. the opposition was dismissed as the defendant could not prove prior use.
- Another opposition was filed by the defendant to the registration of the plaintiff's mark in some other class.
- The plaintiff opposed the defendant's application for registration after the same was advertised in the journal on December 1, 1993.
- After filing this opposition the plaintiff that the defendant's have discontinued the use of the trademark DUNHILL, but resumed manufacturing and marketing their textile articles under the trade mark DUNHILL and they are passing off their products as those of plaintiff.
- Then the present suit was instituted. The plaintiff sought permanent injunction to prevent passing off.

ISSUES:

The defendants resisted the suit contending that:

- Plaintiff has not used the trade mark DUNHILL in India and so plaintiff has no right in respect of the said trade mark in this country.
- Plaintiff's alleged reputation and goodwill of the trademark, DUNHILL stood extinguished due to the restriction on import of foreign goods in India.
- Defendant using the mark since 1986 and the plaintiff brought the suit 11 years later which goes against the prayer of injunction.
- Defendant's use does not amount to passing off.
- It was pleaded in the plaint that the purpose and intent of defendant-company in adopting the work 'DUNHILL' as part of its corporate name is to trade upon and encash on the **name, fame, reputation, image** and **goodwill** acquired by the DUNHILL group of companies.
- The defendant's use of the mark amount to passing off which was affecting the **goodwill** and **reputation** of the same.

Also, the plaintiff-company is the registered proprietor of the mark 'DUNHILL' in a number of classes in India since 1923 so the defendants were aware of plaintiff's use of trade mark and trade name 'DUNHILL' .

The defendant's used the mark to confuse the consumers as to the origin of the product and take advantage of the reputation and goodwill associated with the plaintiff's mark.

Held:

"On the basis of the foregoing facts, I am of the opinion that the plaintiff's trade mark and trade name DUNHILL is entitled to protection and the defendants' use of 'DUNHILL' on their goods is likely to cause confusion or to deceive consuming public in the belief that such goods of defendants are made by, sponsored by or connected in some way in trade with plaintiff and to cause confusion or mistake or to deceive consuming public as to the source or origin of defendants' goods."

“ It is an admitted position that plaintiff's products are being sold at the duty free shops in India. **Transborder reputation** of the trade mark and trade name DUNHILL has been, in my view, established in this country by means of the fact that plaintiff products are available on duty free shops in India, by the fact that advertisement of plaintiff's goods the trade mark and trade name 'DUNHILL' are to be found in various magazines like the Newsweek. Time and the Asia Magazine, which are freely available in India. In this view of the matter, it can safely be inferred that plaintiff's trade mark and trade name DUNHILL has a live reputation in this country. This circumstance alone is sufficient to counter the contention of the learned counsel for the defendants that the plaintiff had abandoned the mark 'DUNHILL'.”

Hence, the suit was dismissed.

MANU/IC/0036/2008

Decided On: 19.03.2008

Appellant: **Polo/Lauren Company, L.P., A limited partnership organized and existing under the laws of the State of New York**

Vs.

Respondent: **Royal Classic Mills Private Limited and The Assistant Registrar of Trade Marks**

FACTS:

This was an appeal against the order passed by the Asst Registrar of Trade Marks wherein an opposition to the registration of the trademark 'C&C CLASSIC POLO' was disallowed.

The first respondent filed an application registration of trade mark 'C&C CLASSIC POLO' (label) in class 25 in respect of readymade garments and all kinds of hosiery goods for sale in the States of Tamil Nadu, Karnataka, Andhra Pradesh and Kerala. The trademark applied for was proposed to be used. The mark was advertised and was asked to disclaim exclusive rights on C&C and CLASSIC, thus POLO being the only prominent and distinguishing feature in the mark.

The appellants were the Ralph Lauren Company, who have an established international business as manufacturers and merchants of high quality men's, women's and children's clothing and variety of consumer merchandise marketed and sold under the well-known trade mark POLO world wide and in India including but not limited to POLO, POLO PLAYER SYMBOL, POLO SPORT, POLO JEANS, POLO BY RALPH LAUREN, etc.

The appellants contended on the grounds of:

- Non-distinctiveness of the mark POLO as the mark could not be distinguished from the appellants' mark. Also, as the defendant intended to use the mark, therefore the mark had no distinctiveness, either acquired or inherent.
- Likelihood of confusion as to the origin of the goods.

➤ POLO trademark of the appellant is well-known and enjoys **transborder reputation** since Ralph Lauren is widely recognised world over for excellence in creation of contemporary clothing designs and has in this field received several awards. Due to extensive use worldwide, publicity globally and registration/protection in various countries for clothing, garment and allied goods and for other goods, the POLO has earned enormous reputation and **goodwill** as a mark of the appellant.

➤ Apart from several trade marks registration containing the word POLO, POLO word mark per se in India, the appellant has registrations in various countries for these marks. The word POLO forming a predominant feature is used as a trade mark, corporate name and as a trading style of the appellant. The goods of appellant bearing POLO mark have been widely advertised in the reputed magazines like Vogue, Variety Fair, Esquire, Sports Illustrated among others. That the adoption of mark by the first respondent was dishonest and malafide and was to cash upon the **goodwill** and **enormous reputation** attached to the appellant's mark.

The respondents counter-argued on the following issues:

- That appellant has failed to prove its claim of ownership of the mark POLO as all the proofs submitted by the appellant are the word POLO in combination with other words or device such as POLO PLAYER SYMBOL, POLO BY RALPH LAUREN, etc. which are absolutely insignificant to this case because when it is compared with the first respondent's composite mark C&C CLASSIC POLO (label), including other features, is totally different by visually, phonetically, layout and getup.
- For deciding the question of deceptive similarity, the nature of marks, the degree of resemblance between the marks, etc. are to be considered, there can not arise any question of deceptive similarity between the marks are likely cause confusion or not is a question of first impression and in deciding the question of similarity between the marks, the broad and essential features of the two marks and the marks as a whole have to be considered and such a question is answered if overall similarity to the registered mark is such as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

✓ Whether a particular trade mark is well-known or not is a question of fact and depends on the special circumstances of each case. According to the respondent's the sine qua non for the protection of a well-known trademark is that it should not be laudatory or descriptive. It has to be an invented one. It has to be an invented/arbitrary mark, devoid of any signification, meaning or suggestiveness. The words POLO, PLAYER AND SYMBOL used in the mark of the appellant is neither a new created word nor is devoid of any meaning when used together. Therefore the term 'POLO' cannot be considered as a well-known mark.

✓ According to the respondent, in the absence of any registered trade mark, the appellant has failed to produce any evidence to establish its mark as a well-known mark. Regarding evidence produced by the appellant to establish its claim of reputation and goodwill in India, the respondent submitted that none of the advertisements having the mark of the appellant can be accessed by the Indian public nor the same are published in India.

Held:

"We hold that the adoption of the mark by the first respondent cannot be said to be honest and bonafide especially when it was aware of the existence of the well reputed mark of the appellant.

The two marks are POLO and C & C CLASSIC POLO and POLO is common and prominent feature. When a person of average intelligence and imperfect recollection he gets the first impression that both are nearly resembling so closely that both may be coming from the same company. He tends to ignore other word C&C CLASSIC, which are otherwise also disclaimed, and retains the word POLO. The goods are common. A consumer will not go into the microscopic inspection of the word or label unless he is a very careful person. The appellant's registered marks having **transborder reputation** and POLO as a formative word being used in conjunction with other words will put the consumers into the state of wonderment whether the first respondent's goods are coming from the trade source of the appellant or the appellant being a **reputed garment manufacturer** and trader might have expanded its business in India and the first respondent's goods have some connection with the appellant."

THANK YOU