

High Court in Harare, Zimbabwe

HH 25/98

F W Woolworth & Co (Zimbabwe) (Pvt) Ltd v The W Store & Another

Court	:	High Court
Case	:	Criminal
Date of Judgement	:	January 28, 1998
Plaintiff	:	F W Woolworth & Co (Zimbabwe) (Pvt) Ltd
Defendant	:	The W Store & Another
Concept	:	Trade Mark
Statue	:	Section 6 of the Trade Marks Act [Chapter 26:04]

Panel of Justices

Gillespie J

Case Background

The original Woolworths stores were started in the United States by the late F W Woolworth. The success of his stores led to the incorporation of F W Woolworth and Co Ltd in the United Kingdom but it also led to other persons incorporating trading companies in other parts of the world. These companies used the name Woolworth in their names, even though no-one of that name was actually involved.

The applicant company was originally incorporated in Zimbabwe country in 1956. It was owned by Woolworth International Ltd, a British company, and associated with the similarly named British company. It thus had the right to use the name of F W Woolworth. In South Africa there is a chain of stores known as Woolworths, operated by Woolworths (Pty) Ltd, a company incorporated in 1931. The W Store is a spacious and well-appointed shop, which sells expensive and good quality merchandise. Every item sold is exclusive to the Wooltru group. All the goods carry a label with a trade mark "*The W Store*". Every garment bears a label with the name "*Woolworths*" and a logo gram on it. The price tags and till slips are printed with the name "*The W Store*". Every article carries a disclaimer, stating that there is no connection with the Woolworths companies of Zimbabwe. Both parties had a logogram. That of the applicant was a stylised curve reminiscent of a W, while the respondents were a capital W, formed of two interlinked Vs.

The applicant sought an interdict, on the grounds of passing off, restraining the respondent from opening and using the applicant's name, trade-mark, logogram or getup; from using the name Woolworths; and from selling goods with the trade mark Woolworths.

Procedural History

The High Court gave a ruling on the case.

Issue

- Whether or not either shop has any identifiable setup.
- Whether by the use of its own name, "*Woolworths*", or its mark, the first respondent is reasonably likely to deceive the ordinary members of the purchasing public, or a substantial

section thereof, to associate the first respondent's W Store with the applicant or to confuse the goods and services of the former with those of the latter.

Rational

The court held that a claim of passing off could not succeed in respect of businesses with closely similar names but very different premises, goods, clientele, etc. The court held that there was no likelihood of confusion in the matter.

Keywords

Delict, passing off, goodwill, representation, exclusive right, imitating, logogram,