

Supreme Court of Zimbabwe

SC 67/2003

Zimbabwe Gelatine (Private) Limited v Cairns Foods (Private) Limited

Court	:	Supreme Court
Case	:	Criminal
Date of Judgement	:	March 20, 2003
Plaintiff	:	Zimbabwe Gelatine (Private) Limited
Defendant	:	Cairns Foods (Private) Limited
Concept	:	Trade Mark Owner Infringement
Statue	:	Section 6 and 17 of the Trade Marks Act [Chapter 26:04]

Panel of Justices

Cheda JA, Ziyambi JA and Gwaunza AJA

Case Background

Cairns Foods (Private) Limited, the respondent, and Zimbabwe Gelatine (Private) Limited, the appellant, are both manufacturers of dog food. The respondent manufactures Wrights Kibbles Instant Mix, while the appellant manufactures Hwau-Hwau Carnivora Kibbles Dog Food. Both parties pack their products in plastic bags of different sizes and sell to the public through shops and supermarkets throughout the country. The respondent applied to the High Court for an order in the following terms:

- The respondent (now the appellant) is hereby interdicted from using the trade mark Kibbles or any other mark, trading name, label or get-up likely to result in the goods and/or business of the respondent being taken to be those or that of the applicant (now the respondent) without SC 130/02 2 clearly distinguishing such goods and/or business from those or that of the applicant.
- The respondent is interdicted and restrained from infringing the applicant's trade mark 1566/95 Kibbles or any other words which so nearly resembles 1566/95 Kibbles as to be likely to deceive or cause confusion on or in relation to any of the goods for which the mark is registered.
- The respondent deliver up to the applicant for obliteration of the mark Kibbles, all packaging, labels, wrapping, advertising matter and other documents in the possession of the respondent bearing the trade mark Kibbles. 4. The cost of this application be borne by the respondent."

Procedural History: The Supreme Court gave a ruling on the case.

Issue: Whether the word 'kibble' is common to the trade of manufacturing dog food.

Rational: Trade marks – difference between passing off infringement., effect of a disclaimer. similar goods.

Keywords Subsidiary, trademark infringement, reputation, goodwill.