

Court awards impractical injunction

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In Ace Tourist Rentals (NZ) Limited t/a Ace Rental Cars v Clouth & Giles Investments Limited t/a Hireace and Trailerace (CIV 2008-404-7743, High Court Auckland, 4 December 2008, Chisholm J), the High Court of New Zealand awarded an interim injunction to the plaintiff.

Ace Tourist Rentals (New Zealand) Limited (the plaintiff) traded as a rental car company and had been using its registered logo comprising of the word “Ace” with an arched arrow, both in yellow, on a blue background since 2000 (“Ace Logo”).

Clouth & Giles Investments Limited (the defendant) also owned a registered trade mark. The logo depicted the word “Hireace” in white with the “Ace” component in italics. The word “Ace” was surrounded by a yellow semi-circle and two stars with a blue background (“Hireace Logo”).

The defendant had previously been in the business of truck, ute and trailer hire but moved into the car hire market in 2008, following the acquisition of a car hire business. In March 2008, following its business expansion, the defendant moved into new premises and repainted the building blue with the Hireace Logo prominently on display.

The plaintiff alleged that the defendant's change of livery and identical colour palette coupled with the use of the name "Ace" would cause confusion in the market and infringe its Ace Logo.

Had the defendant stayed within the truck, ute and trailer hire business, the judge said there would have been no confusion. The judge doubted that as a stand alone factor the word "Ace" is capable of causing confusion. Taking into account of the **overall** impact of both logos however, the judge was satisfied that the similarities would cause confusion in the market, describing damages to the plaintiff as "virtually inevitable".

The defendant was ordered to refrain from use of the Hireace Logo in its advertising and promotional material in relation to the hire of cars but not truck, ute or trailer hire or commercial hire. The judge made an arguably impractical order in that if a car was being dropped off or picked up from the defendant's premises, staff should not wear apparel bearing the Hireace Logo but if a truck, ute, truck or commercial hire vehicle was being dropped off or picked up, then staff were permitted to wear apparel wearing the Hireace Logo. The interim injunction orders stand until the parties resolve their differences or the substantive issues are determined by the court at a full hearing.

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