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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A. 330/84

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BETWEEN AUCKLAND UNIVERSITY STUDENTS ASSOCIATION INC.

First Plaintiff

A N D WAIKATO STUDENT UNION INC.

Second Plaintiff

A N D MASSEY UNIVERSITY STUDENTS ASSOCIATION INC.

Third Plaintiff

A N D VICTORIA UNIVERSITY OF WELLINGTON STUDENTS ASSOCIATION
INC.

Fourth Plaintiff

A N D UNIVERSITY OF CANTERBURY STUDENTS ASSOCIATION INC.

Fifth Plaintiff

A N D LINCOLN COLLEGE STUDENTS ASSOCIATION INC.

Sixth Plaintiff

A N D THE OTAGO UNIVERSITY STUDENTS ASSOCIATION INC.

Seventh Plaintiff

A N D AUCKLAND TEACHER TRAINEES ASSOCIATION

Eighth Plaintiff

A N D PALMERSTON NORTH TEACHERS COLLEGE TRAINEES ASSOCIATION

Nineth Plaintiff

A N D ASSOCIATION OF WELLINGTON TEACHERS COLLEGE TRAINEES

Tenth Plaintiff

A N D CHRISTCHURCH TEACHERS COLLEGE TRAINEES ASSOCIATION

Eleventh Plaintiff

A N D DUNEDIN TEACHERS COLLEGE TRAINEES ASSOCIATION

Twelfth Plaintiff

A N D TISA-CARD LIMITED

Defendant

Hearing: 14 December 1984
Counsel: M.F. Quigg for Plaintiffs
S.P. Bryers for Defendant
Judgment: 19/12/84

JUDGMENT OF ONGLEY J.

The plaintiffs are a number of student bodies formed into incorporated societies. The defendant is a limited liability company engaged in the business of arranging the availability of goods and services at discount rates by means of a discount card system. The plaintiffs seek an interim injunction restraining the defendant from issuing cards giving the appearance that its operations have the support and endorsement of the plaintiffs.

In 1982 the defendant issued its discount card known as the TISA card having printed on it the initial letters of the names of each of the plaintiffs. At first the plaintiffs did not object either to the card or to the promotional material having the same endorsement sent by the defendant to shops and stores. The plaintiffs first challenged the form of the card when it became known to them that the defendant was engaged in discounting travel fares. The reason for that was that the plaintiffs had already entered into commitments in relation to travel concessions and had given its undertaking

not to support other travelcard organisations. They then sought the withdrawal of the card and the removal of the initials identifying them which appeared on the defendant's card.

The dispute has been going on ever since and the plaintiffs allege that undertakings given by the defendant as far back as July 1983 to withdraw the card in its present form have not been honoured. The parties have been negotiating for a settlement of the dispute, at least on an interim basis, literally up to the door of the Court before today's hearing. Sadly they have not achieved that very desirable end. The negotiations were apparently not conducted on a "without prejudice" basis and the exchange of telex communications has been available to me. They appear to have come very close to agreement. The defendant intends to withdraw the offending card and to issue a new card having no apparent connection with the plaintiffs. Mr Quigg, Counsel for the plaintiffs, says unequivocally that because of past experiences the plaintiffs do not trust the defendant to go about the withdrawal in a proper manner. Plaintiffs seek to edit a letter proposed to be sent to cardholders and shopkeepers so as to make clear that the card has not now and did not at any time in the past have the support or endorsement of the plaintiffs. In effect Mr Quigg wants the Court to settle the terms of this letter. He concedes that such a course would be an unusually specific

requirement to be found in an interim restraining order. It would in fact take the form of a mandatory injunction. I can say at once that I am not prepared to go that far on the information before the Court at this stage of these proceedings.

Although the defendant was prepared to make some concessions in the course of negotiations for settlement, those having broken down it now contests the plaintiffs' entitlement to an interim order of any sort. Mr Bryers challenges the cause of action upon which the plaintiffs' claim is founded. The plaintiffs concede that they are not entitled to an order in the form set out in paragraph (b) of the amended motion but claims to be entitled to orders in terms of paragraphs (a), (c) and (d) of the motion which read as follows:

- "(a) Restraining the Defendant from trading with Tisacard displaying the initials of the names of the Plaintiffs.
- (c) Requiring the Defendant to withdraw from Tisacard users all Tisacards issued displaying the initials of the names of the Plaintiffs until the hearing of this action.
- (d) Requiring the Defendant to withdraw from retailers and other outlets all promotional material relating to the Tisacard that displays the Plaintiffs' names or initials."

Mr Quigg regards the plaintiffs' action as being an action to restrain a passing-off. Mr Bryers doubts whether in view of the fact that the plaintiffs are not trading

organisations they can maintain such an action. I have not heard argument in any detail on this issue and I tend to think that a remedy of this sort must be open to the plaintiffs to protect their business relationship with commercial firms with whom they may enter into agreements or to whom they may give undertakings in order to obtain advantageous terms of trade for their members. Assuming they have such a right of action it would seem on the face of it that the value of that relationship would be endangered by the unauthorised use of their names or identifying initials to indicate support for a rival organisation. There is in my view a serious question to be tried. Damages in my view would not be an adequate remedy should the plaintiffs eventually be successful because if the defendant were to persist in its present policy not only might the plaintiffs' relationship with their other associates be adversely affected but their credibility in the business world may be irreparably damaged. In such case damages would be extremely difficult to assess.

On the other hand the defendant does not stand to lose significantly if it is required to desist from the issue of cards in the present form. As I understand the position, in the event of there being a finding that there is an arguable cause of action the defendant does not oppose an injunction being made in these terms:

- (a) That as from 1 January 1985 the Defendant do not issue any Tisa-Card incorporating in its design any groups of initial letters tending to identify the plaintiffs.
- (b) That from the date of this order until 1 January 1985 the Defendant do not issue any Tisa cards.

This seems to me to be preferable from the plaintiffs' point of view to an order in the less specific terms of paragraph (a) of the amended motion.

I am not prepared to make either of the orders sought in paragraphs (c) and (d) of the amended motion. The minimal relief to be obtained from such orders in the short period until the defendant issues its replacement card is out of all proportion to the cost involved in complying with such orders. Further they are not restraining orders but orders which require positive action on the part of the defendant which with regard to the cardholders at any rate it would have no means of enforcing. Neither would the Court have any means of policing such an order.

For what effect it may have, however, I express the view that the defendant in issuing its replacement cards and promotional material should not do so in terms calculated to convey either expressly or by inference the impression that it has any link with the plaintiffs.

An injunction will issue in the terms set out in paragraphs (a) and (b) above.

Costs are reserved.

John Wylie J.

Solicitors

Perry, Wylie, P.O. Box 3246, Wellington for Plaintiffs

Martelli, McKegg, Wells & Cormack, P.O. Box 5745, Auckland for Defendant