

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2008-404-008271

BETWEEN	TAXICHARGE NEW ZEALAND LIMITED AND COMPANY Plaintiff
AND	VONRICK KERR First Defendant
AND	EDI DUMITRU Second Defendant

Hearing: 31 July 2009

Counsel: KW McLeod for Plaintiff
No appearance for Defendants

Judgment: 31 July 2009

ORAL JUDGMENT OF RODNEY HANSEN J

Solicitors: AJ Park, P O Box 565, Auckland for Plaintiff

[1] The plaintiff is a New Zealand partnership which operates in conjunction with taxi companies throughout New Zealand. It provides a TAXICHARGE card/voucher which is used by taxi users to manage their taxi expenditure via the plaintiff's card or voucher-based charging systems. The plaintiff is the proprietor of three registered trade marks for its taxi for its TAXICHARGE (word mark) and its associated logo.

[2] The first defendant is a Wellington taxi operator trading as Supreme Taxis. The second defendant operates a printing business called Zippi Signs, which manufactures and sells signs, including signs used by taxi operators in Wellington.

[3] The plaintiff claims against the first defendant for infringement of its trademarks and against both defendants for breach of the Fair Trading Act 1986. Injunctive relief and damages are sought, although Mr McLeod elects not to pursue the claims for damages in the circumstances that I will now outline.

[4] Both defendants have represented themselves. They have revealed their lack of familiarity with the High Court Rules in the course of interlocutory procedures to date and both that breached timetable orders. At one stage earlier this year judgment was entered against both defendants. That was set aside on terms by Potter J on 27 March 2009. She made consequential timetable orders and allocated a two-hour fixture for the hearing of the claim. That was adjourned on 8 May when amended timetable orders were made and the fixture was subsequently reallocated to today's date.

[5] The first defendant has not filed a statement of defence and the plaintiff is, accordingly, entitled to formally prove its claim against him. The second defendant has filed a statement of defence and affidavits pursuant to directions given on 8 May. Those affidavits were to be filed by 12 June and were only filed in the Registry yesterday. The second defendant, however, advised the Registry several days ago that, for unspecified personal reasons, he did not intend to appear. There is no notice

for cross-examination by either side. In the circumstances, Mr McLeod seeks to proceed to judgment against both defendants.

[6] The evidence satisfies me that the plaintiff is entitled to the injunctive relief it seeks. It has filed an affidavit by Mr Kevin Braid, the General Manager of Wellington Combined Taxis, and also a director of the plaintiff. He deposes that in about August 2008 the first defendant's taxis were featuring signs which reproduced the TAXICHARGE trademarks. There was correspondence between the plaintiff's solicitors and the first defendant regarding the use of the signage. In the correspondence the first defendant did not deny that his taxis featured the TAXICHARGE trademark but he asserted that he was entitled to use the signage. He has confirmed that in an affidavit filed on behalf of the second defendant. He claims to have received the TAXICHARGE logo and associated equipment in 1996, while he was working as an owner/operator/driver with Corporate Transfer Wellington. He claims to have been given unlimited use of the TAXICHARGE logo.

[7] Mr Braid deposes that on 23 October 2008 he noticed signs featuring the TAXICHARGE trademarks displayed on the wall of the showroom of Zippi Signs. He was told by the salesperson behind the counter that the TAXICHARGE signs were for sale and were supplied to taxi companies, including Supreme Taxis. He claimed, however, that Zippi Signs was authorised to make and sell the TAXICHARGE signs.

[8] In correspondence and in the affidavit evidence filed yesterday, the second defendant denies that he has manufactured and sold TAXICHARGE signs, although he acknowledges producing taxi signage for several taxi companies in the Wellington metropolitan area. An employee of the second defendant supports his evidence.

[9] In the absence of an appearance by the second defendant today and any notice seeking to cross-examine Mr Braid, I am prepared to dispose of this claim on the basis of the affidavit evidence. The evidence of Mr Braid, including the correspondence he exhibits, satisfies me that the first defendant has infringed, and is

continuing to infringe, the plaintiff's trademarks and that his actions are in breach of the Fair Trading Act. The second defendant has no right to make or sell signs incorporating the plaintiff's trademarks and the plaintiff is entitled to an order restraining him from doing so.

[10] Accordingly, I make orders:

- a) A declaration that the first defendant has infringed the plaintiff's TAXICHARGE trademarks as set out in the draft orders filed.
- b) An injunction restraining the first defendant, his servants or agents, from using the TAXICHARGE trademarks or any similar trademarks on or in relation to a taxi service, or credit card/chit services used in conjunction with any such taxi service, or any similar service.
- c) An injunction under s 41 of the Fair Trading Act 1986 to restrain the second defendant, his servants, or agents, from using the TAXICHARGE trademarks or any similar trademarks on or in relation to any signs or other printed material and in particular from manufacturing, offering for sale or selling signs featuring the TAXICHARGE trademarks or any similar trademarks.
- d) That the first and second defendants jointly and severally pay costs to the plaintiff on a 2B basis, together with disbursements totalling \$4,650.