

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-MA-0288 OF 2005  
(Arising out of HCT-00-CC-CS-0940 of 2004)**

**BRITANIA ALLIED INDUSTRIES LTD :::::::::::::::::::::  
APPLICANT**

**VERSUS**

**SUNRISE CONFECTIONARIES LTD. ::::::::::::::::::::: RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.**

**R U L I N G**

**Court:**

I have heard the submissions of Counsel for the Applicant on the application for a temporary injunction. The law is fairly settled now as the tests required in an action such as this for Court to consider in granting a temporary injunction. (See Napro case Supra).

The first is whether there are serious questions to be tried a variant from the original prima facie test.

The second is whether the Applicant shall suffer irreparable loss that cannot adequately be compensated for by damages.

Thirdly when in doubt the Court shall use the balance of convenience test.

As to serious questions to be tried Mr. Mugenyi has said that there are questions relating to trade mark infringement pass off by the Respondent. He has shown products by the Respondent which are similar in name to those of his client and are package in the same way. This he argues leads to confusion on the market. He has argued that there are questions of actual deceptions to be tried.

I have looked at the products presented before Court and prima facie they can create confusion as to who is the actual manufacturer.

As to the test of damages Mr. Mugenyi says that the loss to his clients is difficult to assess and indeed this is common in such cases relating to trade marks. I agree that for such cases of intellectual property violations it may not be easy to properly assess the level of irreparable loss thus easily determine whether damages may suffice.

On the balance of convenience Mr. Mugenyi states that his client has been marketing his product for a long time and is the owner of trade mark. The Respondent has no trade mark. I further find that though served the

Respondents have chosen not to come to Court that alone will put the balance of convenience with the Applicant.

All in all the Applicant has discharged the tests and I hereby grant the temporary injunction as follows:-

1. That a temporary injunction doth issue restraining the Respondents, its servants and/or agents and/or workmen from manufacturing, selling or exposing for sale or dealing in any way the juice drinks known as Sun Sil until the disposal HCCS 940 of 2004.
2. The HCCS 940 of 2004 is fixed for hearing on the 30th June, 2004.
3. Costs shall follow the cause.

Sgd: G. Kiryabwire

**JUDGE.**

11/05/2005