

In the Court of Appeal

Fairytale Footsie Company Limited

-v-

Ben Batten (Mayfair) Limited

Since 1965, the Plaintiffs, Fairytale Footsie Company Limited, have manufactured ladies' slippers and marketed them under the unregistered trade mark "Cinderella". One of their special lines is a ladies slipper designed for holiday use. It is a soft slipper which folds over and fits into a pouch which can be easily packed in a suitcase. While the foldaway slippers have various designs and colours, the pouch is always black with a white stud fastener and "Cinderella" in distinctively 'swirly' white letters with a white wand and stars above the letters. About 100,000 pouches containing slippers are sold each year in the British Isles and they are one of the country's leading gift items in the ladies' accessories market.

In 1994, the Defendants began to market ladies' sponge bags and make-up bags under the name "Snow White". The bags themselves vary in design and colour but they are all sold in black pouches with a white stud fastener and with the words "Snow White" in similarly 'swirly' white letters, although there are no stars or wand.

On learning of the Defendants' products, the Plaintiffs applied for an injunction restraining the Defendants from passing their products off as those of the Plaintiffs. The Plaintiffs also sought damages.

In the High Court, Baffle J. held that the Plaintiffs had established reputation in the black and white get-up of their goods. However, he refused to grant an injunction on the ground that the public would not be deceived or led to believe that the Defendants' goods were made by the Plaintiffs, because the parties did not share a common field of trading activity as the Plaintiffs' reputation was limited to slippers.

The Plaintiffs now appeal against Baffle J.'s refusal to grant an injunction on the grounds that the parties' field of activity in ladies travel accessories was sufficiently common to merit an injunction against the Defendants when considered along with the other relevant criteria under the law of Passing Off.

The Defendants cross-appeal on the finding that the Plaintiffs have goodwill in the get-up of their goods, as distinct from the trademark "Cinderella".

This problem is taken from the third round of the Observer-ESU-Lovell White Durrant Mooting Competition 1995-96, and was provided courtesy of the English Speaking Union.