

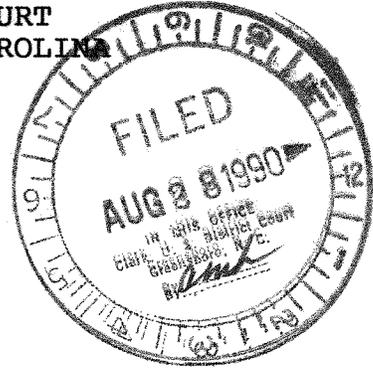
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R. 79 (a)

Hent

AUG 28 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

BY: *cmt*



LIGGETT GROUP, INC.,)
)
Plaintiff,)
)
v.)
)
BROWN & WILLIAMSON TOBACCO)
CORPORATION,)
)
Defendant.)

CIVIL NO. C-84-617-D

MEMORANDUM OPINION and ORDER

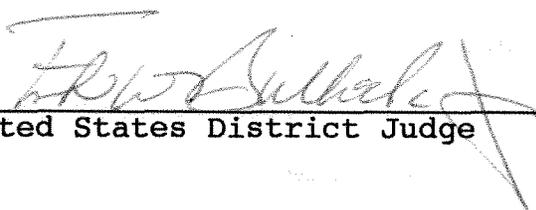
BULLOCK, District Judge

The Plaintiff, Liggett Group, Inc., seeks an injunction to prevent Defendant Brown & Williamson Tobacco Corporation from allegedly infringing upon its leaf design on generic cigarette packages in violation of Section 43(a) of the Lanham Trade-Mark Act, 15 U.S.C. § 1125(a). Upon agreement of the parties, this claim was not litigated in the trial of the principal case, and was reserved for decision by the court.

Liggett and B&W have stipulated that none of the B&W packages with the allegedly infringing leaf design were ever sold. B&W has made assurances to the court that it has discontinued use of the leaf design. Should the court find infringement, an injunction would nevertheless be inappropriate

because B&W has discontinued use of the mark. See Reader's Digest v. Conservative Digest, Inc., 821 F.2d 800, 807 (D.C. Cir. 1987); Camelhair & Cashmere v. Associated Dry Goods, 799 F.2d 6, 13 (1st Cir. 1986); Burndy Corp. v. Teledyne Indus., Inc., 748 F.2d 767, 774 (2d Cir. 1984); see also Parkway Baking Co. v. Freihofer Baking Co., 255 F.2d 641, 649 (3d Cir. 1958). The court is satisfied that Defendant will act in good faith by not using the leaf design on any of its generic cigarette packages in the future. Therefore, the court need not reach the issue of infringement in light of the mootness of the purely equitable issue presented.

THEREFORE, IT IS ORDERED that Liggett's motion for an injunction is DENIED.


United States District Judge

August 28, 1990