

**IN THE HIGH COURT OF JURIDICATURE  
AT MIMOSA CITY,  
MIMOSA**

**2001-2001**

**Design-a-Flower Ltd.**

**VS**

**Floralmania Ltd.**

**WRITTEN SUBMISSION ON BEHALF OF**

**Design-A-Flower Ltd.**

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2. Arun Kumar Chatterjee Application form
3. Board of trustee's Vs Ahmed Nabi
4. Edge Vs Nicolas
5. Gene-Chroma Application case
6. Smith, Ronin & Co. vs U.K Guild of Trade & Commerce.

## **STATEMENT OF JURISDICTION**

The High Court of Mimosa City in the country of Mimosa has jurisdiction to adjudicate this case through the powers of ordinary original jurisdiction conferred upon it by the laws of Mimosa to entertain, decide and adjudicate such suits.

## **STATEMENT OF FACTS**

1. The parties to the suit, The State of Mimosa and The State of Pollen are members of the United Nations and are signatories to the WTO, and all relevant treaties.
2. A New innovative technology called “molecular manipulative technology” is invented by a scientist of highest repute, Mr. Anther, a national of Pollen through which designer plants can be created.
3. Mr. Anther immediately applies for a patent both in Pollen as well as in other countries through the Patent Co-operation Treaty (PCT).
4. This Technology which is referred to as Design-a-Flower gets tremendous international publicity and result in the setting up of a company known as Design-a-Flower Ltd. (DAF), by Mr. Anther.
5. This technology enables a customer order a desired design on any flower such as a checked rose or a cartoon character on tulips and becomes the latest fashion statement which wins an international contest and redefines the whole concept of flower arrangement.
6. Under the Law of Mimosa, it takes four years for a patent application to be published and six years for a patent to be granted.
7. Stigma, a national of Mimosa discovers that though Anther has applied for a patent in Mimosa, it is safe to copy the technology.
8. Using a series of designer plants, Stigma reverse engineers and announces a rival venture called floralmania Ltd. (FLO).
9. FLO’s business in Mimosa picks up enormously.

## **STATEMENT OF ISSUES**

- A. Whether the suit filed by DAF is maintainable in a Court of Law.
- B. Whether the technology invented by Mr. Anther is patentable.
- C. Whether Floralmania Ltd.'s action amounts to
  - 1) Copying.
  - 2) Inducing Unfair Competition.
- D. Whether Violation of Intellectual Property Amounts to Violation of Human Rights.
- E. Whether injunction can be granted to refrain Floramaina Ltd. from producing the Products until a decision to grant a patent of Design-a-Flower Ltd. is arrived at.

## **SUMMARY OF ARGUMENTS**

### **A. The Suit files by DAF is maintainable in the court of law.**

- TRIPS and Original Ordinary Jurisdiction confer upon the Court to adjudicate this Case.
- Art 11 binds Mimosa to protect the Patentable invention of Mr. Anther from unauthorised acts of Infringements.
- Violation by FLO of Art8, Art 12, Art17, Art22, Art27(2) of the Universal. Declaration of Human Rights also imposes the obligation on Mimosa to prevent and punish such acts.

### **B. The Invention by Mr. Anther is Patentable.**

- The invention is Patentable according to art 27(1) of the TRIPS, U.K. Patent Act 1977 and the Indian Patent Act 1970.
- The conditions of Utility and Novelty are also satisfied.
- Also the conditions imposed by BPD is satisfied and hence the Invention is Patentable.

### **C. The acts of FLO amounts to 1) Copying of Mr. Anther's Molecular Manipulative Technology 2) Inducing Unfair Competition.**

- Copying proved as the product of FLO is the same as the starting material it has used which in turn is the end product of DAF
- Lack of distinctive features in the process employed by FLO proves that it is but a mere colourful imitation.
- Reverse Engineering as a process has been held to be failures in 99% of the cases and also to be unknown and harmful according to The Federal Centre for Genetics and Biotechnology, Ohio.

- Mr. Anther's stature as a reputed Scientist enhances the safety of such a project.
- FLO's action induce Unfair Competition.

**D. Violation of Intellectual Property amounts to violation of Human rights.**

- Encroachment of Mr. Anther's ideas by FLO violates Art 27(2) of Universal Declaration of Human Rights.
- Deprivation of the Intellectual Property of Mr. Anther is again violative of art 17 of the above said declaration.
- FLO's actions also violative of Art8, Art12, Art17, Art27(2) and Art29(2) of Universal Declaration of Human Rights.
- Mimosa according to the Doctrine of Incorporation is bound to prevent such violations by FLO.

**E. Temporary Injunction should be granted to DAF restarting FLO from carrying on with its unauthorised Business**

- Temporary injunction should be granted as a relief measure as the rights of Mr. Anthers have been violated by the actions of FLO's
- DAF will suffer irreparable loss if injunction not granted.
- This is but a temporary measure as DAF can claim retrospective damages once the patent is granted.

## **A. The Suit Filed by DAF is maintainable in the Court of Law.**

In its broader sense, the Jurisdiction of a State may refer to its lawful power to decide whether and if, so how to act in the hands of the State<sup>1</sup>

The high Court of Mimosa Certainly has the jurisdiction to adjudicate the present case on its merit, not only through “ordinary original Jurisdiction” conferred to it, but also, through Art. 1(1) of the TRIPS Agreement<sup>2</sup>

There may arise misapprehensions that the suit filed maybe a suit infringement of patent and hence unmaintainable. But Design-a-Flower Ltd. may take recourse of Art 11 of the Paris Convention<sup>3</sup> which conclusively binds all the signatories into an obligation to grant temporary protection to patentable inventions.

Also in the case of Gene-Chroma Application<sup>4</sup>, it was held that, it is the duty of the state to protect and safeguard a patentable invention, though not patented, from unauthorised acts of infringement for a specific time frame.

Hence humbly submitted before this honourable court that the State of Mimosa being a signatory of the Paris Conventions has the obligation to protect the proposed invention of Mr. Anther, which as the subsequent contention proves is patentable<sup>5</sup>, against unauthorised acts of infringement until a patent is granted. Also there has been a violation of Art.8, Art 12, Art 17, art 22, art 27(2) of the Universal Declaration of Human rights<sup>6</sup> as has been proved in the subsequent contention.

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<sup>1</sup> Ian Brownlie, Principal of International Law

<sup>2</sup> TRIPS Art 11(1), “member shall be free to determine the method of implementing the provisions of this agreement within their own legal system and practice

<sup>3</sup> Art 11(1), “ The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs and trademarks in respect of goods exhibited at official or officially recognised international exhibition held in the territory of any of them.”

<sup>4</sup> The Gene-Chroma Application Case, Appln no. A2, 1996.

“.... & it is also the solemn duty of the state to protect such patentable inventions which await confirmation of patent grant from unauthorised acts of infringements.”

<sup>5</sup> Refer to page 2

<sup>6</sup> refer to page

Hence the suit is maintainable in the Court of Law. Also DAF prays for the protection of this court from unethical, immoral barbarous acts of copying as has been blatantly demonstrated by FLO on the proposed invention of Mr. Anther.

## **B. The invention by Mr. Anther is patentable.**

There are certain condition which when fulfilled amount to an invention being patentable. According to Art 27 of TRIPS<sup>7</sup> Agreement, an invention is new if it involves an inventive step and is capable of industrial application. According to the UK patent Act 1977 and the Indian Patent Act 1970 an invention is said to be patentable if it is a new useful art, process, method or manner of manufacture, machine, apparatus or other articles, or substance produced by manufacture and any new useful improvement of any of them.<sup>8</sup>

The invention by Mr. Anther satisfies the above conditions and hence is patentable. Also the questions of utility and novelty are satisfied. Regarding the question relating to patentability of genetically engineers organisms, it has been held by American Cyananide Vs Berk Pharmaceuticals.<sup>9</sup> that a patent could be granted for mutation and genetically induced experiments.

The US patent Office statement<sup>10</sup> issued in 1995 conclusively states that :

*“The process of technique that is employed in the production of genetically engineered organisms, altered genes, probs, vectors etc. which falls in the area of engineering, protein engineering, cell fusion and hybridoma technology, tissue culture, gene therapy and fermentation technology, are invention that are patentable.”*

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<sup>7</sup> Art 27(1), “....patents shall be available for any inventions, whether products, in all fields of technology, provided, theta they are new, involve an inventive step and are capable of industrial application.”

<sup>8</sup> P. Narayanan, Patent Law, 3<sup>rd</sup> edition

<sup>9</sup> 1976 (RPC 23 at 253).

<sup>10</sup> Kerney and Walson, **Protection of Patents**, 2<sup>nd</sup> edition, 1996

The invention of the Mr. Anther is based on Molecular Manipulative Technology, Which falls within the purview of Genetic engineering and hence is patentable.

The invention by Mr. Anther is through Molecular Manipulative Technology which by using a flower, converts it into a finished product with designed as required and manipulated by the inventor. It also fulfills the aspect of novelty and utility. Furthermore it has become a fashion statements and thus a commercial success<sup>11</sup>

Art. 4(2) of the Biotechnology Patenting Directive<sup>12</sup> 1989 clearly states that “.... inventions which concern plants of animals shall be patentable if the feasibility of the invention is not confined to a particular plant or variety.”

This aspect is also satisfied, as the use of the proposed Molecular Manipulative Technology is not confined to any particular plant of variety.<sup>13</sup>

Hence irrespective of the inadequacies of the Law of Mimosa regarding the patentability of plants, Mimosa is bound by its international treaties of which it is a party to adhere to international norms and conventions.

Hence proved that the proposed invention is patentable.

### **C. Whether the acts of Floralmaina Ltd. amount to**

- 1) Copying of Mr. Anther’s Technology.**
- 2) Inducing Unfair Competition.**

#### **C.1. FLO’s has copied Mr. Anther’s Technology.**

DAF contends that the process of reverse engineering is but a copy of the original Molecular. Manipulative Technology and thus an infringement of the rights of Mr. Anther in his capacity as the inventor of the patentable invention.

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<sup>11</sup> Inferred from the facts of the case

<sup>12</sup> **United Nations Year Book**, 1989

If the starting material remains unaltered by any process whatsoever and if the end product is also the same as the starting material, then the process be called a manufacture for the purpose of patentability as was held in Arun Kumar Chatterjee Application case.<sup>14</sup>

Hence there arises no question of patentability of the process of FLO as it fails to fulfill the conditions required for obtaining a patent of an invention. The argument that a patentable technology can be copied just because it is awaiting a patent is in itself an immoral and an unethical argument and hits at the very face of justice, equity, and conscience.

Further it has been held that if the feature of resemblance between the plaintiff's goods and the defendant's goods are common to the trade, the defendant will have to show that he has adopted some feature or combination particular to his goods and it is a distinctive feature of his goods as according to the case of *Edge Vs Nicolas*.<sup>15</sup>

The features of the products of FLO are very similar to DAF<sup>16</sup>. Further the raw material of FLO is the end product of FLO is but a colourable imitation of the starting product of FLO and hence the onus is on FLO to prove that it has adopted some particular combination or process peculiar to its product.

The Process utilised by FLO is a process known as Reverse Engineering. Reverse Engineering is the process of analysing an existing system to create representation of the systems at a higher level of abstraction. The Federal Centre for Genetic and Biotechnology, Ohio<sup>17</sup> in its elaborate experiments on Reverse Engineering has come to the conclusion that -

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<sup>13</sup> inferred from the fact of the case

<sup>14</sup> Cornish, Intellectual Property, 1991, 2DPD 30 AT 41

<sup>15</sup> Edge Vs Nicolas, **Cambridge book of Intellectual Property**

<sup>16</sup> Inferred from the facts of the case

<sup>17</sup> **The Year Book of U.S. Patent Office** 1999

*“ 99% of Reverse Engineering cases are failures and the end product is not known and may be harmful. Reverse Engineering on plants becomes an even more unpredictable and haphazard process, the reason being that the DNA of plants contains hundreds of millions of code syllabi and there is no way to insert a gene through Reverse Engineering in a predetermined location in a plant with 100% accuracy that the end product will be safe.”*

DAF inserted the gene through Molecular Manipulative Technology and thus created a new product.<sup>18</sup> If FLO claims that it has not copied the process and has come up with a new process of Reverse Engineering then their stand becomes even weaker as it has been proved earlier that the end products of the above cited process may be unknown and Harmful.

Further it violates and Further the credibility of DAF is far greater than FLO Because :

- (i) It has been genetically engineered through Molecular Manipulative Technology as compared to FLO's process of Reverse Engineering.<sup>19</sup>
- (ii) The Person of responsibility in DAF is Mr. Anther, a scientist of international repute and an expert in his field.
- (iii) DAF is the First Inventor.

Hence submitted before this Honourable Court that FLO's actions are but a copy of DAF's process, until proved otherwise. If proved otherwise that the process employed by FLO is Reverse Engineering on plants is very dangerous and harmful and may result in genetic pollution and environmental sabotage.

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<sup>18</sup> Inferred from the facts to case

<sup>19</sup> ibid

## **C.2 FLO's action violates the basic conditions of Unfair Competition**

Unfair competition is defined as “any act of competition contrary to honest practices in industrial or commercial matters constitute an act of unfair competition”<sup>20</sup>

Also under Art. 10<sup>bis</sup> (3) “indications of allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics .... is prohibited”<sup>21</sup>

In the case *Smith, Ronin & Co. vs U.K. Guild of Trade & Commerce*<sup>22</sup>, it was held that. “If a party causes misconceptions in the mind of the public with respect to the credibility of the stand liable to pay damages as it has restored to unfair competition.”

As noted from the facts of the case, the popularity and demand for FLO's flowers was greater than DAF's and thus they violate this clause.

This facts, juxtaposed with FLO's unauthorised copying of DAF's technology clearly falls under the above cited definition of unfair competition. Thus FLO has successfully violated all the regulations laid down in art 10 of the Paris Convention and hence, are liable to make amends to DAF. Art 10<sup>bis</sup> states “there is no specific single law ensuring protection against unfair competition....., but there are many law like the MRTP act which provide effective protection against unfair competition.” Also under Art 10<sup>ter</sup> “the countries of the Union undertake to assure nationals of other countries of the Union appropriate legal remedies effectively repress all the acts referred to in Art 9, Art 10, Art 10<sup>bis</sup>.”<sup>23</sup>

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<sup>20</sup> **Art 10(2) of The Paris Convention**

<sup>21</sup> *ibid*

<sup>22</sup> Cornish, *Intellectual Property*, 1991

<sup>23</sup> **The Paris Convention**  
refer to Art 9,10 & 10bis

All the more, the argument of retrospective action for damages is concerned, it falls at the very face of Justice, as it is similar to waiting for a crime to happen and then resort to make amends. Thus it can be proved that FLO's actions amount to unfair competition and DAF seeks protection against such unfair competition.

**D) Whether the violation of Intellectual Property amounts to violation of Human Rights.**

The designer flowers created are but an expression of human ideas and intellect as has been demonstrated by Mr. Anther.

This expression of ideas is the property of Mr. Anther and Mr. Anther alone and any encroachment on it whatsoever is but a violation of Art. 27(2) of **UNDHR**<sup>24</sup>, also FLO by copying Mr. Anther's technology has harmed his moral and material interests resulting from his scientific production.

Hence Mr. Anther can invoke protection from Mimosa with respect to the above said article 27(2) of UNDHR.

Further the actions of FLO have been but an infringement of the intellectual property of Mr. Anther and amounts to the deprivation of his property, which in turn is in violation of Art. 17 of the UNDHR which conclusively states "that no one should be arbitrarily deprived of his property."<sup>25</sup>

The laws of Mimosa cannot act as a limitation to DAF from not filing a suit for infringement and it cannot act as an encouragement to FLO to indulge

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<sup>24</sup> Universal Declaration on Human Rights  
Art 27(2), "Everyone has the right to protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author."

<sup>25</sup> Art 17(2) Universal Declaration of Human Rights  
"No one shall be arbitrarily deprived of his property."

in such an unethical & unjust fashion, for not only does it violate Art. 29(2) of UNDHR but also is against the very basis of natural justice.<sup>26</sup>

The Invention by DAF is a result of arduous labour, expensive research and application of the ingenious mind of Mr. Anther and FLO by comfortably copying it is only demonstrating the extent of human indecency. This not only violates Art. 17, Art. 27(2), Art. 29(2) and Art. 12 of the UNDHR but also defeats the very purpose of law as the failure to punish FLO for its act will be to protect and preserve injustice. Hence humbly submitted before the honorable court that the Doctrine of incorporation<sup>27</sup> be invoked and that the Declaration of Human Rights be directly applied as according to Art. 38 of the Vienna Convention.

**E) Temporary Injunction should be granted to DAF restraining FLO from carrying on with its unauthorised Business.**

According to Salmond<sup>28</sup>, Injunction can be granted as a relief when a right is violated. The Rights of DAF have been systematically violated by FLO as has been proved in the earlier contentions. Also there has been a blatant exhibition of unfair trade practices. Furthermore so the basic rights of Mr. Anther have been violated.

To be granted an injunction, the suit must be *prima facie*, there must be a balance of Convenience and irreparable loss should be suffered on not granting the injunction.<sup>29</sup>

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<sup>26</sup> Art 29(2) *ibid*.

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by Law by solely for the purpose of securing due recognition and respect for the Rights and freedoms of others and meeting the just requirements of morality, Public Order and the general welfare in a democratic society.”

<sup>27</sup> Scwazanberger, International Law, Doctrine of Incorporation, “Customary Laws of International repercussions are to be considered as the part of the Law of the land.”

<sup>28</sup> Salmond, Jurisprudence

<sup>29</sup> David Bean, Injunctions, 1994

FLO's unauthorised copying of DAF's technology has generated for them greater popularity and revenue as compared to the pioneer, DAF30. This has affected DAF in terms of revenue, market, as they could not recover their desired amount of income from the use of their technology. Also Mr. Anther's claim come under question, as many will be made to believe that the technology is a brainchild of FLO. Thus his repute as an imminent scientist is also in danger, not to mention the stress and trauma he is bearing. As under Art. 11 of the Paris Convention<sup>31</sup>, Mimosa is responsible to ensure that Mr. Anther's patentable invention is not infringed upon. Thus it can be proved that refusal to grant injunction will result in irreparable loss. In the case of Board of trustee's Vs Ahmed Nabi<sup>32</sup>, temporary injunction was granted on fulfilling two conditions that being the suit is prima facie and there will be irreparable loss suffered.

Hence humbly prayed before this Honourable court that DAF be granted a temporary injunction to safeguard their commercial interests and be spared the unnecessary harassment.

It is also brought to the attention of this Honourable Court that the invention of Mr. Anther is the result of painstaking labour, tremendous patience and a lifetime of dedication. Hence the Infringement of the rights of Mr. Anther is blatant abuse of the sanctity of science and its development and by not upholding it, would be defeating the entire purpose of science and justice.

Also DAF is aware of the fact that Damages can only be claimed retrospectively and hence doesn't file for it, but it humbly submits that injunction be granted until such time that some decision on the Patent of Mr. Anther is concerned.

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30 Inferred from the facts of the case

31 Supra

32 AIR 1933 Lahore 621

## **PRAYER**

It is hereinafter prayed before this Honourable Court that in the lights of the issues raised, Arguments advanced, authorities cited and expert opinion sought, this Court declare that

- 1) The Suit is maintainable before the Court of Law,
- 2) The Invention by Mr. Anther is Patentable,
- 3) FLO's actions amount to copying and Unfair trade practices,
- 4) Human Rights of Mr. Anther have been violated,
- 5) Temporary Injunction be granted and FLO be restrained from carrying on with its business until further orders from the Court,

and any other order that this Court may deem fit in the interest of Justice, Equity and good Conscience.