



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 June 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

**National Brands Limited v Cape Cookies CC and Another (Case nos 309/2022 and 567/2022)
[2023] ZASCA 93 (12 June 2023)**

Today the Supreme Court of Appeal upheld an appeal from a judgment of Le Roux AJ in the Gauteng Division of the High Court, Pretoria (the high court). The appeal arose from an application by Cape Cookies CC (Cape Cookies) to register the trade mark SNACKCRAX in class 30 relating, inter alia, to savoury biscuits. The application was opposed by National Brands Limited (National Brands) which holds the registered trade mark SALTICRAX in that class. The opposition was based on various grounds in s 10 of the Trade Marks Act 194 of 1993 (the Act). One such ground was s 10(17) of the Act which prohibits the registration of:

‘ . . . a mark which is identical or similar to a trade mark which is already registered and which is well-known in the Republic, if the use of the mark sought to be registered would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trade mark, notwithstanding the absence of deception or confusion . . . ’.

Cape Cookies accepted that SALTICRAX was well-known in the Republic. It submitted that this section, introduced in 1993 in line with international anti-dilution provisions, applied only to marks used in goods or services which were not similar to each other. In an analysis of the provision, the Supreme Court of Appeal rejected that submission,

holding that it applied also to similar goods or services. Cape Cookies also submitted that SNACKCRAX had as its dominant element the suffix CRAX, that this was a word in common use as a shortened form of 'crackers' and was, thus, non-distinctive. There was no evidence in support of that contention and it was also not reflected as such in dictionaries. This argument was thus also rejected.

Cape Cookies contended that SNACKCRAX and SALTICRAX were not similar. In analysing them in the accepted manner, without reference to whether it would lead to confusion, the Supreme Court of Appeal held that the two marks were similar. As a result, it had to be assessed whether, if registered, the use of SNACKCRAX 'would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute' of SALTICRAX. On the evidence before it, the Supreme Court of Appeal held that such was the case and that the high court had accordingly erred in directing that SNACKCRAX be registered. An order was substituted upholding the opposition to registration and refusing the application for registration along with costs orders.

~~~~ends~~~~