



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 19 March 2021

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Koni Multinational Brands (Pty) Ltd v Beiersdorf AG (553/19) [2021] ZASCA 24 (19 March 2021)

Today the Supreme Court of Appeal (SCA) dismissed with costs, the appellant's appeal against an order of the Gauteng Division of the High Court, Johannesburg, which interdicted the appellant from competing unlawfully with the respondent, by passing off its CONNIE MEN ACTIVE SHOWER GEL as being a product of the respondent or associated with the respondent's NIVEA MEN products. The majority of the SCA, per Schippers JA (with Cachalia JA and Sutherland and Unterhalter AJJA concurring) held that the respondent had established that its goods had acquired a particular reputation and was the market leader in respect of its NIVEA MEN shower gel and body lotion range since 2010, and that the NIVEA MEN shower gel dominated the market in advertising, consumer recognition and sales. The majority found that the logo on the CONNIE shower gel was an appropriation of the NIVEA MEN wave-label indicia on the same kind of product, so as to connect it to a known and established brand; and that the get-up, overall appearance and format of the CONNIE shower gel is confusingly similar to the respondent's products.

In a dissenting judgment (per Makgoka JA) it was held that the respondent had failed to establish the requisite reputation and goodwill in the get-up of its men's products, and that there is no likelihood of confusion between the parties' competing products.

END