



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

29 March 2012

STATUS: Immediate

Primedia v Radio Retail 354/2011

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

The Supreme Court of Appeal (the SCA) today upheld an appeal from the Western Cape High Court, Cape Town interdicting Primedia (Pty) Ltd t/a Primedia Instore from unlawfully interfering in the contractual relationships between ZaPOP (Pty) Ltd and 330 franchisees associated with the well-known Spar Group.

The parties are competitors in the retail in-store industry in the area of product marketing. The three respondents (Radio Retail (Pty) Ltd, Radio Retail for Spar (Pty) Ltd and ZaPOP) marketed their services to 330 Spar franchisees with which they had exclusive agreements for in-store promotions. Primedia, however, was also promoting its products in some of the stores that the respondents had exclusive agreements with. The respondents alleged that the Primedia was marketing, selling and installing media types similar to the respondents' in these stores. The respondents instituted interdictory proceedings against the appellant to restrain it from competing unlawfully with them by interfering with their contractual rights, with the franchisees. They also sought to prevent Primedia from making false representations about them.

The high court found that the appellant had unlawfully interfered with the contractual relationships between the respondents and the Spar franchisees in question. The high court therefore granted the respondents the interdictory relief against Primedia that they sought.

On appeal, the issue before the court was whether Primedia's conduct in promoting its own products based on its pre-existing agreements with some of the franchisees with which the respondents also had exclusive agreements, constituted an inducement for the franchisees to breach their contracts with the respondents.

The SCA held that to obtain an interdictory relief on inducement to breach a contract, proof of reasonable apprehension was necessary. Based on a factual enquiry, the SCA held that there was no evidence to suggest that Primedia's conduct caused the franchisees to breach their exclusive agreements with the respondents nor was there any evidence to suggest that the products marketed by the appellant were the same as those of the respondents. All Primedia had been doing, the SCA held, was to lawfully enforce their own contracts with the franchisees, which they were entitled to do.

The SCA held further that since the appellant had given an undertaking not to disseminate false statements about the respondents, the respondents could not have any reasonable apprehension that the appellant would not adhere to this undertaking; hence, there was no ground to interdict the further dissemination of false representations.

Primedia's appeal was consequently upheld with costs.

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