



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 29 March 2012

Status: Immediate

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.

Adcock Ingram v Cipla Medpro

The Supreme Court of Appeal today upheld an appeal by Adcock Ingram Intellectual Property (Pty) Ltd and Adcock Healthcare (Pty) Ltd against the dismissal of their application in the Pretoria High Court to remove the trade mark of Cipla Medpro (Pty) Ltd, ZENEX, from the register of trade marks. Adcock Ingram is the owner of the trade mark ZETOMAX. Both ZENEX and ZETOMAX are pharmaceutical products used in the treatment of hypertension and certain cardiac conditions. ZETOMAX was registered as a trade mark in 1998 and ZEMAX in 2004. Both are generic medicines having as its active ingredient Lisinopril. The appellants applied for the removal of the trade mark ZENEX from

the register because it argued that, although the name ZENEX is not identical to ZETOMAX, it is nevertheless so similar so as to be likely to deceive or cause confusion. The SCA held that in order to determine whether there is such similarity not only the specialised pharmaceutical market for prescription drugs had to be considered but also the patient. The patient has to be informed of the availability of a generic substitute for a branded medicine in terms of s 22F of the Medicines and Related Substances Act 101 of 1965 and the generic product must be dispensed unless the patient forbids it. The patient is thus given a choice. Quite apart from this s 8 of the National Health Act 61 of 2003 gives a patient the right to participate in any decision affecting his or her health and treatment. The SCA held that the marks were so similar that the patient could well be deceived or confused, and ordered the removal of the trade mark ZENEX from the register of trade marks.