



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

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

***The Gap, Inc v Salt of the Earth Creations (Pty) Ltd and others
(695/11) [2012] ZASCA 68 (23 May 2012)***

Media Statement

The Supreme Court of Appeal (the SCA) today upheld an appeal from the North Gauteng High Court, Pretoria finding that use of a registered trademark by the appellant, The Gap, Inc, a United States corporation, in respect of its range of body care products, was bona fide.

The dispute between the parties had been settled out of court but the appellant, was nevertheless constrained to proceed with the appeal unopposed since there was an existing judgment that affected the trademark in dispute and dealt with a public register.

The respondents, three South African companies, namely, Salt of the Earth Creations (Pty) Ltd, Kingsgate Clothing (Pty) Ltd and Paul Vivaldi Fashions (Pty) Ltd instituted an application in the high court in terms of s 27(1) of the Trade Marks Act 194 of 1993 for the expungement of the Appellant's trade mark from the Register of Trade Marks on the basis of non-use. The Respondent's application succeeded before the high court.

On an evaluation of the facts, the SCA found two applicable periods relevant to the usage of the trade mark by the appellant. Analysing the evidence it held that usage of the trade mark by the appellant in South Africa may have been on a more modest scale relative to the appellant's activities elsewhere in the world but it surpasses the fairly low threshold set by the authorities quoted in the judgment.

The appeal was accordingly upheld.

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