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	20 June 2012
STATUS	Immediate

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

***BATSA V Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012)**

The Supreme Court of Appeal (SCA) dismissed an appeal against an order made by the North Gauteng High Court, Pretoria. This appeal is concerned with the proper interpretation of s 3(1)*(a)* of the Tobacco Products Control Act 83 of 1993 as amended by the Tobacco Products Amendment Act 63 of 2008, more specifically the prohibition on the promotion and advertising of tobacco products.

The essence of the appellant's complaint is that, in terms of s 16(1) of the Constitution, the impugned prohibition limits not only the appellant's right to engage in commercial expression but also the right to freedom of expression of tobacco consumers who are denied the right to receive information concerning tobacco products.

The question before the Court was whether the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account relevant factors, including the nature of the right, and the nature and extent of the limitation, as required by s 36(1) of the Constitution. The SCA held that in the present case they are required to consider the rights of the smokers on the one hand, to receive information concerning the tobacco product, and the government's obligation to take steps to protect its citizens from the hazardous and damaging effects of tobacco use on the other.

The SCA found that there exists powerful public health considerations for a ban on the advertising and promotion of tobacco products and that the seriousness of the hazards of smoking far out weigh the interests of the

smokers as a group. The SCA further held that South Africa also bears international law obligations to ban tobacco advertising and promotion.

As a result the SCA found the respondent was able to establish that the prohibition on advertising and promotion of tobacco products is reasonable and justifiable as required by s 36(1) of the Constitution.

With regard to costs, the SCA held that although the appellant was seeking to advance its own commercial interest in bringing the application, its challenge to the constitutionality of the section cannot be described as frivolous or in any other way inappropriate

For these reasons the SCA made the following order:
1 Subject to paragraph 2 hereof the appeal is dismissed.
2 The costs order in the court a quo is set aside and replaced with the following:
‘No order is made as to costs.’