

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– 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 intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Etraction (Pty) Ltd v Tyrecor (Pty) Ltd

The SCA today dismissed an appeal in which the appellant Etraction (Pty) Ltd, a dealer in tyres and wheels sought to enforce its registered trade mark INFINITY against a competitor, Tyrecor (Pty) Ltd, to prevent the latter from importing into South Africa and selling tyres under the brand name Infinity. On the evidence Tyrecor's predecessor in title had been importing and selling tyres under the brand name Infinity for more than two years prior to the registration of Etraction's trade mark. The court held that this constituted bona fide and continuous use of the mark, which is protected in terms of s 36(1) of the Trade Marks Act 194 of 1993.

The court also dismissed an appeal against the high court's decision to expunge the word 'tires' from Etraction's registered mark. It did so on the basis that in terms of s 27(1) of the Trade Marks Act Etraction had not had a bona fide intention to use the mark INFINITY in respect of tyres, but had caused the mark to be registered for the ulterior purpose of disrupting Tyrecor's established business.