



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: 30 September 2016

Status: Immediate

PEPKOR RETAIL (PTY) LTD v TRUWORTHS LIMITED

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

1. The respondent, Truworths Limited (Truworths), is the proprietor of the registered trade mark THE LOOK (the mark). The appellant, Pepkor Retail (Pty) Ltd (Ackermans), uses the phrase THE LOOK FOR LESS (the phrase). Truworths applied in the Western Cape Division of the High Court for an interdict restraining Ackermans from using the phrase. Truworths' case, in essence, was that the use of the phrase constituted an infringement of the mark. Ackermans filed a counter-application for removal of the mark from the register of trade marks, principally on the ground that it had no inherent or acquired distinctiveness. The Western Cape Division granted the interdict and refused the counter-application. Ackermans appealed to the Supreme Court of Appeal (SCA).

2. Today the SCA upheld the appeal of Ackermans. The SCA held that the mark consisted only of words that, in the fashion retail industry, carry the universal ordinary meaning of fashionable or trendy clothes or outfits. Thus, the SCA held that the mark had no inherent distinctiveness. The SCA also held that the mark had not acquired distinctiveness through use. The SCA accordingly ordered the removal of the mark THE LOOK from the register of trade marks and set aside the interdict that prohibited the use of the phrase THE LOOK FOR LESS by Ackermans.

--ends--