

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.

Westminster Tobacco Co v Philip Morris Products SA [2017] ZASCA 10

The SCA today upheld an appeal by Westminster Tobacco Co against an order of the Gauteng Division, Pretoria of the High Court ordering the deletion of two trademarks for PARLIAMENT. The issue was whether Westminster had made bona fide use of the marks in the period of five years prior to 22 July 2008. The High Court accepted the evidence of Westminster's main witness that the marks had been used on cigarettes that would be targeted at the low price sector of the market and used to disrupt the market of competing low price brands in selected areas, called hot spots, where they were showing growth. It held that this was not use for the purpose for which trade mark protection existed.

The SCA held that it is not necessary in order to show bona fide use of a trade mark that the use must be extensive or successful. Westminster was not trying to establish a major new brand in the low price sector of the market, but to create a brand that could be used strategically in that sector. Such use constituted bona fide use. Accordingly the application for the expungement of the two marks should

not have succeeded. The appeal was upheld and the order for expungement was set aside.