



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 15 September 2017
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.

PepsiCo Inc v Atlantic Industries (983/16) [2017] ZASCA 109

The Supreme Court of Appeal (the SCA) today dismissed an appeal against a judgment of a full court of the Gauteng Division of the High Court, Pretoria, in which the full court had (i) dismissed an appeal by PepsiCo against the dismissal, by a single judge, of PepsiCo's application for the expungement of certain registered trade marks of which Atlantic is the proprietor and (ii) upheld an appeal by Atlantic against the single judge's granting of PepsiCo's application for the registration of certain trade marks.

Atlantic Industries is the registered proprietor of the trade marks TWIST, LEMON TWIST and DIET TWIST in relation to non-alcoholic drinks. PepsiCo applied to have these marks expunged and applied for the registration of the word mark PEPSI TWIST and of a device mark incorporating the words PEPSI TWIST. PepsiCo applied for the expungement of Atlantic's marks on the basis that the word 'Twist' was not capable of distinguishing a proprietor's goods and was purely descriptive. The SCA rejected these contentions,

finding that the word 'Twist' in relation to non-alcoholic drinks was an arbitrary non-descriptive word and that any association with non-alcoholic drinks was at most allusive or metaphorical. There was in any event overwhelming evidence that through extensive use the mark TWIST had become distinctive of Atlantic's beverages.

In regard to PepsiCo's application for the registration of its marks, the SCA held that the incorporation, in the proposed marks, of the sole distinctive feature of Atlantic's marks, namely TWIST, was likely to deceive or cause confusion as to the origins of the beverages manufactured by Atlantic and PepsiCo respectively. The likelihood of deception or confusion was not avoided by inserting PEPSI before TWIST because the latter word played an independent distinctive role in the composite sign.

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