



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 22 November 2017

STATUS Immediate

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

Cochrane Steel Products (Pty) Ltd v M-Systems Group (1272/2016) [2017] ZASCA 189 (22 November 2017)

MEDIA STATEMENT

Save for a minor adjustment to the order of the Court below, the Gauteng Division of the High Court, Pretoria, the Supreme Court of Appeal today dismissed an appeal by Cochrane Steel Products against endorsements imposed by that court as a condition of registration of the trade mark 'CLEARVU'.

The court below ordered the registration of the mark subject to the following conditions:

- 1.1 The registration of this mark shall give no right to the exclusive use of the word 'clear' and 'view' separately and apart from the mark;
- 1.2 The trademark registrant admits that the registration of this mark shall not debar others from the *bona fide* descriptive use in the course of trade of the words 'clear view' and 'view'.

The SCA considered that the composite mark was a deliberate misspelling of the ordinary words 'clear' and 'view'. It held that neither Cochrane nor any other trade was entitled to appropriate those words exclusively. Furthermore, those words were commonly used to describe perimeter fencing products such as those produced by Cochrane and its competitors.

The SCA had regard to the second condition imposed by the court below and held that in truth it was a disclaimer rather than an admission. It found that the disclaimers were rightly entered and dismissed the appeal.
