



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: 3 November 2022  
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.*

**Golden Fried Chicken (Pty) Ltd**

**v**

**Vlachos and Another**

Today the Supreme Court of Appeal dismissed an appeal from the Gauteng Division of the High Court, Johannesburg (per Yacoob J). This appeal concerned the alleged infringement of a registered trade mark under the Trade Marks Act 194 of 1993 (the Act). Both parties trade in food services in the restaurant sector. The appellant trades as 'Chicken Licken' through a number of food outlets and has registered the word 'Soul' under class 43 of the Act as a service trade mark. The respondents have operated two Greek food outlets under the name 'Soul Souvlaki' since 2012. The appellant brought infringement proceedings under s 34(1)(a) of the Act asserting that 'Soul Souvlaki' infringed its mark 'Soul' as being 'a mark so nearly resembling it as to be likely to deceive or cause confusion.'

With reference to the principles applicable to trade mark law, it was necessary to determine this question on the basis that the appellant notionally used the mark to trade in Greek food under the name 'Soul' and not only its present basis. The question was whether members of the restaurant going public would be likely to

believe that the service offered by the respondents emanated from the appellant. The Supreme Court of Appeal considered previous matters and conducted an analysis of this question but concluded that the appellant had not proved that the use of 'Soul Souvlaki' would be likely to so deceive or confuse.

Despite the high court having erred in conflating principles of passing off with trade mark infringements and considering a number of irrelevant factors, it had correctly dismissed the application. For this reason the Supreme Court of Appeal dismissed the appeal with costs.