

BLUE LION MANUFACTURING v NATIONAL BRANDS SCA

- "TEA LOVERS" & "TENNIS"
- ATTEMPT BY TEA LOVERS TO CONFUSE NOT DISTINGUISH
- TEA LOVERS CHANGED ITS PACKAGING TO A SIMILAR PACKING AS "TENNIS"
- IMITATION / PASSING-OFF
- LIKELIHOOD OF DECEPTION AND CONFUSION HAD BEEN ESTABLISHED

COURT HELD:

- SCHUTZ - AN APPLICANT IN A PASSING-OFF CASE MUST PROVE HIS REPUTATION
- PROVE INSTANCES OF ACTUAL DECEPTION OR CONFUSION

PASQUALI CIGARETTE CO v DIACONICOLAS & CAPSOPOLUS

"NO MAN IS ALLOWED TO PASS OFF HIS GOODS AS THE GOODS OF ANOTHER PERSON; NO MANUFACTURER OF GOODS IS ALLOWED TO REPRESENT TO THE PUBLIC THAT THE GOODS WHICH HE IS SELLING ARE THE GOODS OF A RIVAL MANUFACTURER"

- APPEAL DISMISSED!

NATIONAL BRANDS v BLUE LION MANUFACTURING

- INFRINGEMENT UNDER S 34(1)(a) OF TRADE MARKS ACT 1994 OF 1993
- "INFRINGEMENT BY USE OF MARK SO NEARLY RESEMBLING TRADE MARK AS TO BE LIKELY TO DECEIVE AND CONFUSE"
- INFRINGEMENT UNDER S 34(1)(c) - INFRINGEMENT BY USE OF A MARK "SIMILAR OR IDENTICAL TO TRADE MARK NOTWITHSTANDING ABSENCE OF LIKELIHOOD OF CONFUSION OR DECEPTION"
- "ROMANY CREAMS" v "ROMANTIC DREAMS"

COURT HELD:

- MARKS NOT LIKELY TO CONFUSE OR DECEIVE BY THEIR SOUND
- VISUAL DISTINCTIONS - EACH CONTURED UP A DIFFERENT PICTURE
- S 34(1)(a) - FAIL
- "SIMILAR" GIVEN ORDINARY MEANING OF "A MARKED RESEMBLANCE OR LIKENESS", "MARK" MEANT "EASY TO RECOGNISE"
- ROMANTIC DREAMS WAS NOT AN EASILY RECOGNISABLE LIKENESS OF ROMANY CREAMS FOR THE SAME REASON S 34(1)(a) DID NOT APPLY
- LIKELY TO CONFUSE OR DECEIVE - REQUIRES A COMPARISON OF THE MARKS
- VISUAL APPEARANCE CANNOT BE SEPARATED FROM ITS SENSE
- APPEAL DISMISSED!

INDAC ELECTRONICS v VOLKSKAS BANK AD

- LIABILITY OF COLLECTING BANKER
- LIABILITY OF COLLECTING BANKER TO TRUE OWNER OF CHEQUE
- NO REASON IN PRINCIPLE WHY A COLLECTING BANKER SHOULD NOT BE HELD LIABLE UNDER THE EXTENDED *LEX AQUILIA* FOR NEGLIGENCE TO THE TRUE OWNER OF A CHEQUE, PROVIDED THAT ALL THE ELEMENTS OR REQUIREMENTS OF *AQUILIAN LIABILITY* HAVE BEEN MET

1) WHERE THE APPELLANT HAD ALLEGED THAT IT WAS THE TRUE OWNER OF A CHEQUE DRAWN BY A BRANCH OF THE RESPONDENT BANK IN FAVOUR OF THE APPELLANT OR ORDER - THE PAYEE BEING SPECIFIED AS 'INDAC ELECTRONICS' - AND CROSSED AND MARKED 'NOT NEGOTIABLE', THAT SUCH CHEQUE HAD NOT BEEN ENDORSSED EITHER IN BLANK OR SPECIALLY IN FAVOUR OF L; THAT ANOTHER BRANCH OF THE RESPONDENT BANK HAD RECEIVED THE CHEQUE FOR COLLECTION, NOT ON THE APPELLANT'S BEHALF, BUT ON BEHALF OF L, WHO WAS A CUSTOMER AT THE LATTER BRANCH, AND THAT THE LATTER BRANCH HAD PAID THE PROCEEDS OF THE CHEQUE TO L DESPITE THE FACT HE HAD NO RIGHT TO RECEIVE SUCH PAYMENT"

ZIMBABWE - A COLLECTING BANK OWES A DUTY OF CARE TO THE TRUE OWNER OF A LOST OR STOLEN CHEQUE.

COURT HELD

- DELICTUAL CLAIM FOR DAMAGES INSTITUTED
- IN THE JUDGE IS IN FAVOUR OF RECOGNISING THE EXISTENCE OF A LEGAL DUTY ON THE PART OF A COLLECTING BANKER TO THE TRUE OWNER OF A LOST OR STOLEN CHEQUE TO AVOID CAUSING HIM PURE ECONOMIC LOSS BY NEGLIGENCELY DEALING WITH SUCH CHEQUE
- THE *LEX AQUILIA* DOES PROVIDE A BASIS UPON WHICH A COLLECTING BANKER MAY BE HELD LIABLE IN NEGLIGENCE TO THE TRUE OWNER OF A LOST OR STOLEN CHEQUE
- APPEAL SUCCEEDS WITH COSTS

SCHULTZ v BUTT AD

- UNFAIR COMPETITION - REQUIREMENTS FOR AQUILIAN ACTION
- IN ORDER TO SUCCEED IN AN AQUILIAN ACTION BASED ON UNFAIR COMPETITION, THE PLAINTIFF MUST ESTABLISH ALL THE REQUISITES OF AQUILIAN LIABILITY, INCLUDING PROOF THAT THE DEFENDANT HAS COMMITTED A WRONGFUL ACT
- THE APPELLANT HAD FILCHED THE RESPONDENTS DESIGN BY USING A HULL MANUFACTURED BY THE RESPONDENT AS A PLUG FOR THE MANUFACTURE OF A MOULD WHICH IN TURN WAS USED TO MANUFACTURE HULLS FOR BOATS MANUFACTURED BY THE APPELLANT AS A COMMERCIAL VENTURE
- ORIGINAL CLAIM FOR RELIEF BY WAY OF INTERDICT WAS BASED ON PASSING OFF AND "UNLAWFUL COMPETITION AND FOR UNLAWFUL INTERFERENCE WITH MY TRADE" - LATER CHANGED TO BREACH OF COPYRIGHT

COURT HELD

- SCHULTZ' CONDUCT AMOUNTED TO UNFAIR COMPETITION, AGAINST WHICH BUTT WAS ENTITLED TO BE PROTECTED
- SCHULTZ INFRINGED BUTT'S COPYRIGHT. - DECLARATORY ORDER CANCELING SCHULTZ'S COPYRIGHT.
- CANCELLATION OF THE REGISTRATION OF SCHULTZ'S DESIGN WAS GRANTED
- APPEAL DISMISSED!

Columbus Joint Venture v. ABSA BANK SCA

- COLLECTING BANKS LIABILITY TOWARDS TRUE OWNER OF LOST OR STOLEN CHEQUE
- DUTY OF CARE WHEN OPENING ACCOUNT FOR A CUSTOMER

AN EMPLOYEE OF THE APPELLANT, B, HAD OPENED AN ACCOUNT WITH THE RESPONDENT BANK, IN THE NAME OF STANBROOKE & HOOPER. A DOCUMENT PURPORTING TO BE A FRANCHISE AGREEMENT BETWEEN S&H, AS FRANCHISOR, AND B, AS FRANCHISEE, WAS HANDED TO THE BANK. S&H WAS REFLECTED THEREIN AS A FIRM OF SOLICITORS SPECIALISING IN EUROPEAN COMMUNITY LAW. THE FRANCHISE AGREEMENT REQUIRED THAT THE FRANCHISEE OPERATE A BANK ACCOUNT IN THE NAME OF S&H. B WAS AN EXISTING CLIENT OF THE BANK WHEN THE ACC. WAS OPENED. B'S DETAILS ON THE FORM WERE TRUE. ALTHOUGH A FIRM NAMED S&H DID EXIST, THE FRANCHISE AGREEMENT WAS A FRAUD. B HAD DEPOSITED 39 CHEQUES, ALL DRAWN BY THE APPELLANT (JV) ON ITS BANK ACCOUNT, INTO THE S&H ACCOUNT. THE APPELLANT HELD THAT THE BANK HAD BEEN NEGLIGENT

COURT HEED

- SINCE B HAD FURNISHED AUTHENTIC PERSONAL DETAILS, SERVED AS ASSURANCE ~~THAT~~ OF THE AUTHENTICITY OF THE OTHER DETAILS AND IN ANY CASE AS AN EXISTING CUSTOMER B COULD BE TRACED.
- WHETHER IT HAD BEEN SHOWN THAT IN THE CIRCUMSTANCE HAD BEEN SUCH AS TO HAVE CAUSED A REASONABLE AND PRUDENT BANKER, PROPERLY CONSIDERING THE AVAILABLE INFORMATION, TO HAVE SUSPICIONS ABOUT ITS CUSTOMERS BONA FIDES
 - ONLY IF THE CIRCUMSTANCES WERE SUCH WOULD THE NEED FOR FURTHER ENQUIRIES ARISE
- THERE WAS NO BASIS FOR CONCLUDING THAT THE BANK HAD FAILED IN THE DUTY IT OWED TO THE APPELLANT

- APPEAL DISMISSED |

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STANDARD BANK v SHAM MAGAZINE AD

- MARKINGS ON A CHEQUE - WHEN CHEQUES CROSSED AND MARKED "NOT TRANSFERABLE" AND "A/C PAYEE ONLY" - SUCH A CHEQUE REMAINS TRANSFERABLE.
- S 80 & S 81 (d)

QUESTION BEFORE THE COURT:

WHETHER A CHEQUE WHICH IS MADE PAYABLE "TO THE ORDER" OF AN NAMED PAYEE, CROSSED GENERALLY AND MARKED "NOT NEGOTIABLE, A/C PAYEE ONLY" IS THEREBY RENDERED NON-TRANSFERABLE

FACTS

- SHAM HAD AN ACCOUNT WITH STANDARD
- THE RESPONDENT (SHAM) DREW A CHEQUE UPON STANDARD TO "PAY THE ORDER OF" AND DELIVERED IT TO THE PAYEE (POST-DATED CHEQUE)
- NOT NEGOTIABLE
A/C PAYEE ONLY - PRINTED WITH "PAYEE TO THE ORDER OF"
- THE PAYEE DELIVERED THE CHEQUE TO THE APPELLANT BANK TO WHICH IT WAS INDEBTED AND ENDORSED THE CHEQUE SPECIALLY TO THE APPELLANT
- UPON PRESENTATION TO THE RESPONDENT'S BANK IT WAS DISHONOURRED ON THE SAME DAY FOR LACK OF FUNDS
- THE APPELLANT SUED THE RESPONDENT CLAIMING TO BE THE LEGAL HOLDER OF THE DISHONOURRED CHEQUE

THE WORDS "A/C PAYEE ONLY" HAVE NO EFFECT ON THE TRANSFERABILITY OF A CHEQUE. THEY ARE IN EFFECT A DIRECTION TO THE COLLECTING BANK, THAT THE SPECIFIED PAYEE SHOULD RECEIVE THE MONEY. THESE WORDS CEASE TO HAVE OPERATION IF THE PAYEE SPECIFIED IN THE CHEQUE TRANSFERS IT BECAUSE IN SUCH A CASE, THE SPECIFIED PAYEE PARTS WITH HIS RIGHT TO RECEIVE THE MONEY

- APPEAL ALLOWED!

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