

# INFRINGEMENT OF A TRADE MARK (ss 34(1) & 35)

## Section 34(1)

Sec 34 (1)	(a)	Registered in SA	unauthorised use	Same or similar mark	<b>Same</b> goods or services	Likelihood of deception or confusion	--
	(b)	Registered in SA	unauthorised use	Same or similar mark	<b>Similar</b> goods or services	Likelihood of deception or confusion	--
	(c)	Registered in SA + <b>WELL KNOWN</b>	unauthorised use	Same or similar mark	<b>Any</b> goods or services (usually not similar)	--	Likely to take <b>unfair advantage</b> of, OR be detrimental to the distinctive character or <b>repute</b>

Activity 5 on p252 (p 262 Afrikaans)

<b>SUPERSILK ®</b>	<b>SUPASILK</b>
34(1)(a) 	Same goods 
34(1)(b) 	Similar goods 
34(1)(c) 	Any goods 

## Section 34(1)(c) vs Section 35

Sec 34 (1) (c)	Registered in SA + <b>WELL KNOWN</b>	Un- authorised use	Same or similar mark	<b>Any</b> goods or services	--	Likely to take <b>unfair advantage</b> of, OR be detrimental to the distinctive character or <b>repute</b>
e.g. SUPERSILK for cosmetics / SUPASILK for chocolates (Activity 5(3) on p252)						
Sec 35	<b>WELL KNOWN</b> (not registered in SA)	Un- authorised use	Reproduction/ imitation/ translation	<b>Similar</b> goods or services	Likelihood of deception or confusion	--
<p>e.g. No (4) of the summary activity on p252 of the study guide:  M, a German manufacturer, markets a range of clothing under the mark ROAMER. ROAMER is not registered in South Africa but has become well known here as a result of extensive advertising in overseas fashion magazines which are circulated in South Africa. M discovers that P has commenced using the mark ROMA on clothing.  Can M stop P from using the ROMA mark on clothing?</p>						