

The High Court in Harare, Zimbabwe

HH 50/20

Gold Driven Tobacco (Pvt) Ltd v Maxiafrica Manufacturing (Pvt) Ltd

Court	:	High Court
Case	:	Criminal
Date of Judgement	:	January 9, 2011
Plaintiff	:	Gold Driven Tobacco (Pvt) Ltd
Defendant	:	Maxiafrica Manufacturing (Pvt) Ltd
Concept	:	Trade Mark Infringement
Statue	:	Section 8(1), 9A(2), 16 and 33(3)Trade Marks Act, [Chapter 26:04]

Panel of Justices

Mazunzu J

Case Background

The applicant says the trademark has been extensively used in Zimbabwe and as a result the applicant has secured and acquired good will in the marketing and sale of its cigarettes. Furthermore, applicant says has done adverts in promoting its "JINHUANG" cigarettes. On the other hand the respondent is an authorized trade mark licensee of "JINLONG". The proprietor of "JINLONG" trademarks is a Mr Wong Hung Yuen who happens to be a director of the respondent and is the deponent to the opposing affidavit. The applicant's and respondent's products which are mainly cigarettes are largely targeting the Chinese community in Zimbabwe. The applicant complains that the respondent's trade mark "JINLONG" infringes its trade mark "JINHUANG". The two trademarks are in the Chinese language. Applicant alleges that Respondent's trademarks encompass the applicant's prefix "JIN" and the Chinese character equivalent too

Procedural History

The High Court gave a judgement on the case.

Issue

- Whether there is trade mark infringement on use of similar trade marks on a similar product.

Rational

The court distinguished between passing off and trade mark infringement and considered the requirements for a prohibitory interdict (injunction). The application was dismissed on the basis that there was no reasonable likelihood of confusion and therefore no infringement and therefore no justification for the grant of the interdict.

Keywords

Delict, passing off, trade mark infringement