IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023/019330
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
DATE: 31/3/2023
SIGNATURE:

In the matter between –

HALEWOOD INTERNATIONAL SOUTH AFRICA (PTY) LTD APPLICANT

and

VAN ZYL, HERMAN ADRIAAN 1st RESPONDENT

COMMONWEALTH SQUARE (PTY) LTD 2nd RESPONDENT

JUDGMENT

MOORCROFT AJ:

Summary

Urgency – respondent reacts to application to interdict defamation by publishing defamatory material on social media – Punitive cost order justified

Defamation – interim interdict- requirements - Relief must be specific and not seek to interdict defamation in broad terms

Company entitled to protection against defamation

Order

[1] I make the following order:

1. *Pending the final determination of the main application for interim interdictory relief, under the above case number, issued on 24 February 2023 ("the main application"), it is ordered that the first respondent is:*

   1.1. *interdicted and restrained from publishing any defamatory statements, posts, memes, comments, video clips or sound clips, to or on any platform, referring to the applicant, the applicant's business, regarding Buffelsfontein Draught, Buffelsfontein Lager and Buffelsfontein Brandy ("the products") wherein he publicises, infers or imputes that:*

      1.1.1. *the applicant is dishonest, or deceives the public regarding the uniqueness of the products; and*

      1.1.2. *the applicant's business model is designed to intentionally mislead the public; and*

      1.1.3. *the applicant markets, sells and distributes the products which are of inferior quality, masquerading as superior products; and*

      1.1.4. *that the products are generic products, relabelled by the applicant; and*

      1.1.5. *that the applicant passes generic products off, as its own unique products; and*

      1.1.6. *the applicant misrepresents to or deceives the public into believing, that the applicant is a proudly South-African company, when the applicant is owned by, or is a British company; and*

      1.1.7. *that the applicant is involved in, partaking in, or working in unison with Buffelsfontein Beesboerdery (Pty) Ltd, and Signal Hill Products (Pty) Ltd, in an unlawful scheme, founded on dishonest and misleading*

misrepresentations to the public and customers; and

1.1.8. the applicant treats the public with distain, regards and refers to its clientele, and the public as stupid; and

1.1.9. the applicant admitted to the practice of re-labelling generic products, under the brand Buffelsfontein, and stated that the aforesaid practice is 'industry standard' or 'standard practice in the industry'; and

1.1.10. the applicant's labelling on the products are misleading, deceptive, or intended to mislead or deceive the public; and

1.1.11. the applicant misleads, deceives, or intends to mislead or deceive the public, by not printing the name of the manufacturer of Buffelsfontein Brandy, on the labels thereon,; and

1.1.12. the applicant owns the products/ the brand/ the trademark Buffelsfontein and/ or is the owner of Buffelsfontein Beesboerdery (Pty) Ltd; and

1.1.13. the applicant is or is wholly owned by Halewood Artisanal Spirits, a British company; and

1.1.14. the applicant is part of, and partakes in a cover-up regarding unlawful, misleading, and deceitful practices by Signal Hill Products (Pty) Ltd and Buffelsfontein Beesboerdery (Pty) Ltd.

1.2. interdicted and restrained from publishing, any statements on any platform which, directly or indirectly, invites, entices or calls on the public to boycott the applicant's business, or the products, and

1.3. interdicted and restrained from publishing or re-publishing, any statements on any platform which, directly or indirectly, promotes, causes, entices or is likely to entice any person or entity, from partaking in the publicising, re-publicising

or dissemination of any publication, meeting the criteria in the paragraphs 1.1 and 1.2 above ("the/ any offending publication"), irrespective of whether the offending publication is already in the public domain;

1.4. *interdicted from referred to Halewood Artisanal Spirits as the applicant in the pending proceedings; and*

1.5. *to remove from any platform the publications attached to the founding affidavit in this application as annexures;*

2. *The parties are granted leave, to supplement their papers in the main application;*

3. *The first respondent is to pay the costs of this application, on a scale as between attorney and client.*

[2] The reasons for the order follow below.

Introduction

[3] The applicant brought an application in the ordinary course on 6 March 2023, seeking to interdict certain actions by the 1st respondent pending the outcome of an action for damages. In the main application the applicant seeks interdictory relief based on or arising out of defamation,

3.1 interdicting publication of the fact that the application has been instituted,

3.2 interdicting defamatory statements referring to

3.2.1 the applicant,

3.2.2 the applicant's business,

3.2.3 the products marketed by the applicant,

3.2.4 the applicant's relationships with other entities,\

3.3 interdicting allegations of fraud, deceit, misleading the public, or false advertising, and disparaging comments,

3.4 interdicting statements calculated to entice a boycott of the applicant's business or products,

3.5 interdicting steps taken to encourage others from publishing the offending material, and

3.6 ordering the respondents to remove the offending material that the 1st respondent is aware of.

[4] The applicant is a commercial enterprise and carries on business as a bottler, a cannery, wholesalers and distributor of alcoholic and non-alcoholic beverages. It has an annual turnover in excess of R3 billion and employs more than 300 people. The 1st respondent (referred to as "the respondent" unless the context dictates otherwise) is a businessman and a director of the 2nd respondent. No relief is sought against the 2nd respondent and it is cited as an interested party.

[5] The applicant feared that the service of the application might elicit an adverse response from the respondent and was advised to regard the application as confidential and that an urgent application may be brought if he were to publicise the pending application.

[6] The applicant now complains that the respondent has selectively published extracts from the application and intentionally contorted the meaning of passages by strategically excising passages and by misrepresenting the identity of the applicant.

[7] On 8 March 2023 the applicant's attorneys sent an email to the respondent's attorneys seeking an undertaking from the respondent. The attorneys acknowledged receipt but no undertaking was given. On the 9th it was decided to proceed with an urgent application. The applicant argues that the pecuniary loss suffered by the

applicant was difficult to quantify but that there was harm to the applicant's goodwill and reputation arising from the respondent's conduct. An interdict is therefore the appropriate remedy to prevent future harm.

[8] The applicant believes that the actions of the respondent are a threat to the applicant's business relationship with a number of suppliers, primarily Buffelsfontein, KWV, and Signal Hill Products.

[9] Two of the main points of dispute are that the applicant regards and portrays itself as a South African company and this fact plays an important part in its reputation, and secondly the question whether the applicant's Buffelsfontein beer is merely a rebranded generic Signal Hill Products beer, or one brewed by Signal Hill Products and derived from the standard beer.

[10] There is no clear indication on the papers as to why the respondent feels so strongly about attacking the applicant on these issues that he is prepared to go the lengths he does.

[11] On 7 March 2023 the respondent published a post on social media, accusing the applicant of fraudulently pretending to be a South African company and said that the applicant should be ashamed of itself. It is then stated that the respondent have served court papers on the applicant and others and that the Competition Commission will be involved in investigations.

[12] The posts are ostensibly made in the public interest but they are written in vindictive, malicious language. The public is then invited to publicise the post and News24, Maroela Media, Beeld newpaper and the Rapport newspaper are referred to in the post.

[13] The Buffelsfontein trade mark is then used with the words *"lieg vir die publiek in persverklaring."*

[14] The respondent adds that the applicant should be ashamed for misleading its loyal clients.

[15] Other posts refer to the television programme Carte Blanche as a target of the respondent's allegations.

[16] The applicant is not the owner of the Buffelsfontein trade marks but is in a business relationship with the owner and it is associated with the Buffelsfontein products and mark, The derogatory words used in the context of an attack on the applicant, is derogatory also of the applicant. The applicant pays a royalty to Buffelsfontein and the two firms share the rights to the Buffelsfontein alcohol brands. Neither the applicant nor Buffelsfontein produce their own brandy or beer but they make use of third parties for production, notably KWV (Kaapse Wyn Vereniging) for brandy and Signal Hill Products for beer.

[17] The respondent then published portions of the court papers in the main application with certain phrases highlighted and others blocked out. The respondent then alleges that Buffelsfontein Brandy has been 'exposed' and that the brandy that consumers regard as South African is actually 'British" and that the British was absconding with the money of South African clients. The post reeks of xenophobia.

[18] The Buffelsfontein brandy bottle is shown with a Union Jack superimposed. The court papers as presented creates the impression that the applicant is not Halewood International South Africa (Pty) Ltd, but an associated British company by the name of Halewood Artisanal Spirits. The respondent's case is that the applicant is the British company purporting to be a South African company. There are no objective facts placed before Court to support this allegation.

[19] The respondent warns South African consumers that *"the British own your brandy"* (*'Die Britte Besit jou brannas'*) and the public is then 'informed' that they believed that Halewood and Buffelsfontein was 'cool local company' but that this was a front. The pending court application is, he states, an attempt to prevent the public from learning the truth.

[20] The applicant is then accused of misleading consumers because it does not own a brewery or a distillery. It is common cause that the applicant and

Buffelsfontein outsource their beer to Signal Hill Products and its brandy to KWV. The clear innuendo in the post is that this is a despicable thing to do, but there is no basis or in law for the innuendo. The outsourcing of manufacturing is a commonly accepted business practice.

[21] The beer brewed by Signal Hill Products is brewed specifically for the applicant and is based on 'standard base beer' that is then tailored to the needs of a client, in this case the applicant and Buffelsfontein. The respondent accuses the applicant of selling Signal Hill Products beer as its own Buffelsfontein beer and denies that it was tailored specifically for the applicant, and he was told this by someone at Signal Hill Products. He regards it is his duty to speak up about this fact in the public interest and the applicant retorts that he is really doing it because he owes money to the applicant.

[22] In the social media posts the respondent makes the allegation that he had served court papers on the applicant, Buffelsfontein, Signal Hill Products, and Devils Peak for damages. At the time of the founding application no papers had been served.

[23] It is clear from the publications made by the respondent that he is on what he considers, or at least portrays as, a righteous crusade against the applicant. His crusade does not go unnoticed. Other social media users responded by referring to *"lies in the media"* by the applicant, and to *"fraud on the public"*. There is no basis laid for these accusations.

[24] Reading what was published does not come across as righteous but as vindictive and malicious. Whether he does so for commercial gain, out of xenophobia, or out of spite need not be decided in this urgent application, but the applicant is entitled to interdict the continuation of his actions whether he carries it out under his own name or under the guise of other entities.

[25] The respondent's reliance on truth and public interest rings hollow. If the respondent had done research to substantiate his accusations he would, for instance, not need to rely on what he was "told by" someone in support of his

allegation that the applicant's beer is not its own but merely a generic Signal Hill Products beer with a different label.

[26] It is also not clear why he would believe it to be in the public interest to inform people of what he describes as the facts, especially when his version is disputed by the target of his accusations. A more careful and socially minded business person will make sure he or she obtains all the facts before making accusations on the Internet and asking others to disseminate these views as widely as possible.

[27] It is not desirable or necessary in this judgment to deal with the prior relationship between the applicant and the respondent that led to a dispute in September 2022.

Defamation

[28] The law of defamation is comprehensively dealt with in the literature[1] and the urgency of the matter precludes a long judgment on the legal principles. A company is entitled to claim damages[2] and to the protection afforded by an interdict.

[29] The courts do not interdict future defamation in broad terms. It is not possible to interdict a respondent in broad and general terms from defaming an applicant in the future. Rather, a court may interdict specific acts of defamation, for example, it may interdict the respondent from repeating an allegation that the applicant stole money from his employer. Thus, in *Buthelezi v Poorter and Others*[3] the applicant sought an interdict to the further publication of an article containing specified, specific defamatory material. Similarly, in C*leghorn and Harris Ltd v National Union of Distributive Workers*[4] the applicant brought an application to interdict the further publication of a handbill containing allegedly defamatory material.

[30] The allegedly defamatory material must be placed before the Court. It cannot be merely referred to as '*material'* without setting out what the material consists of. The Court must be in a position to evaluate the material and must be satisfied that

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1 The law is summarised by Kinghorn '*Defamation'* in *The Law of South Africa* vol 7 2005.
2 *Caxton Ltd and Others v Reeva Forman (Pty) Ltd and Another* 1990 (3) SA 547 (A).
3 *Buthelezi v Poorter and Others* 1974 (4) SA 831 (W).
4 C*leghorn and Harris Ltd v National Union of Distributive Workers* 1940 CPD 409.

the applicant has established the probable harmful effect of its publication.[5]

[31] The order as sought was over-broad and I have addressed this in the order made by me. I have had regard to the draft order sent to my Registrar and to the respondent's legal representatives.

The authority of the deponent to the founding affidavit

[32] The respondent challenged the authority of the deponent to the founding affidavit. There is no merit in the submission. The respondent did not challenge the authority of the applicant's attorneys by invoking Rule 7.[6]

[33] The deponent to the founding affidavit is a director of the applicant. I am satisfied that his personal knowledge appears from the affidavits he deposed to and in the replying affidavit he amplifies his allegation that he is a director, by saying he is the *managing* director.

The requirements for an interim interdict[7]

[34] The applicant has to show reasonable apprehension of irreparable harm, the absence of another suitable remedy, and either –

34.1 a clear right,[8] or

34.2 a *prima facie* right and that the balance of convenience is in its favour. In such a case the question of harm arises in the context of harm if the interim relief were refused and final relief granted later.

[35] I am of the view that the applicant has a clear right to its business reputation and goodwill. It has a right not to subject to defamatory, derogatory and inflammatory remarks such as those seen in the papers. There are no alternative remedy – a

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5 *Tsichlas and Another v Touch Line Media (Pty) Ltd* 2004 (2) SA 112 (W) 130J-131A.

6 See *Eskom v Soweto City Council* 1992 (2) SA 703 (W).

7 See Van Loggerenberg DE and Bertelsmann E *Erasmus: Superior Court Practice* RS 20, 2022, D6-1.

8 A clear right is required for a final order; for an interim order a *prima facie* right will suffice if the balance of convenience favours the applicant. When the right is a clear right the balance of convenience is not relevant.

damages claim to be decided at some future point in time is not[9] an alternative remedy to continuing harm and damages will be notoriously difficult to quantify under these circumstances.

[36] If I am wrong in this view, the applicant should nevertheless succeed as it has at the very least a *prima facie* right, and the balance of convenience is overwhelmingly in favour of the applicant. If the defamatory remarks are repeated, the harm is obvious; on the other hand if the respondent were interdicted from making these allegations now he will still have his day in court.

Urgency

[37] I am satisfied that a case has been made out for a hearing in the urgent court and on short notice. The respondent when served with the main application chose to react by posting on social media instead of dealing with the dispute by filing answering papers. There was no need for flurry of media posts immediately after the service of the main application and the respondent only has himself to blame for having to deal with the matter in urgent court instead of in the normal course when it would be possible to spend adequate time on preparation and argument.

[38] When the application was served the respondent reacted by doing the very thing he was accused of in the founding affidavit in the main application. For this reason I am of the view that a punitive cost order is justified.

Conclusion

[39] I therefore make the order in paragraph 1 above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

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[9] See *Wynberg Municipality v Dreyer* 1920 AD 439 and *Tullen Industries Ltd v A de Sousa Costa (Pty) Ltd* 1976 (4) SA 218 (T).

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **31 MARCH 2023**.

COUNSEL FOR THE APPLICANT:	C VAN DER MERWE
INSTRUCTED BY:	AJ SCHOLTZ ATTORNEY
COUNSEL FOR THE RESPONDENTS:	D R DU TOIT
INSTRUCTED BY:	SDH ATTORNEYS
DATE OF THE HEARING:	22 MARCH 2023
DATE OF JUDGMENT:	31 MARCH 2023