

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 3 April 2007

Status: Immediate

SUNSMART PRODUCTS (PTY) LTD v FLAG AND FLAGPOLE INDUSTRIES (PTY) LTD t/a NATIONAL FLAG

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.

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The SCA today upheld an appeal against a judgment in the Court of the Commissioner of Patents and the Pretoria High Court in terms of which it was held that a patent and a design in respect of a teardrop flag used for advertising was invalid and held that the appellants patent and design had been infringed by the respondent.

The respondent had submitted that neither the claimed invention nor the design was new and that the claimed invention was obvious.

The SCA dismissed these submissions on the ground that neither the claimed invention nor the design had been shown to have been anticipated.

The respondent did not contend that its flag was substantially different from the registered design. It accepted that, in the event of it being held that the design had validly been registered, it had infringed the registered design.

In regard to its alleged infringement of the patent the respondent contended that its flag did not contain all the essential features of the patent in that, in terms of the patent, a

pole adapted to engage a piece of material is required whereas the pole used by it was not so adapted. The SCA interpreted the phrase ‘a pole adapted to engage a piece of material’ to mean a pole suitable for engaging a piece of material. It held that the fact that in the flag manufactured by the respondent a pole and a piece of material are attached to one another, proved that the pole used by the respondent was suitable for engaging a piece of material.