

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No: **1316/2006**

In the matter between:

FAITH PATRICIA SMART

First Applicant

WADE JOHN ARTHOR ATHERTON

Second Applicant

DANIEL JOHANNES GROENEWALD

Third Applicant

and

THE REALLY GREAT BRAND COMPANY (PTY) LTD

First Respondent

GEORGIOS IOANNIDES

Second Respondent

JUDGMENT: 12 DECEMBER 2007

GOLIATH, J

Introduction

1. In and during September 2005 “Jack Daniels of Tennessee” (“Jack”) celebrated his 155th birthday and generously decided to give away a Limited Edition Harley Davidson motorbike valued at R250 000,00 in a national competition. First respondent promoted the lucky draw on Jack’s behalf. The three Applicants were selected as national finalist and had to participate in the final draw held in Cape Town. Shortly before the final draw first respondent admitted a fourth finalist, i.e. second respondent to the draw. The lucky draw turned into an unlucky draw for the Applicants when the first respondent went on to draw the winning key which started the bike. Jack had no option but to withhold the prize pending settlement of this dispute. This is an application to declare second respondent’s participation in the contest irregular and invalid and to compel first respondent to re-run the final draw of the competition.

The “Jack Daniels” 155th Birthday Promotional Competition

2. The promotional competition as advertised on the Jack Daniels website advised participants that *“there are three ways for folks to get lucky”*:

- 2.1 Buy a bottle of Jack Daniels at a bottle store and complete an entry card.
- 2.2 Watch DSTV from 1 September 2005 and SMS details to the specified number given on screen.
- 2.3 Join the celebrations at one of Jacks birthday parties around the country during September. Jack will choose one lucky person at these parties who will go through to the next round.

3. The rules of the competition in respect of the party events appear in annexure A as well as supplementary information in annexures B to G and state as follows:

1. Closing date for entries: 30 September 2005.
2. Prizes may not be redeemed for cash.
3. Employees, spouse, life partners, parent, child, brother, sister, business partner or an associate of RGBC or their advertising/promotional agencies may not enter this competition.
4. The judges decision in relation to all aspects of this competition is final.
5. No correspondence will be entered into.
6. The advertiser reserves the right to use entrants/winners photographs for promotional/advertorial purposes.
7. Winners must be over the age of 18.
8. One semi-finalist will be chosen from the entries at each event in a random draw and will be invited to attend a Jack birthday celebration, where a finalist will be randomly selected.

9. The final draw for the Limited Edition Harley Davidson Fat Boy will take place on Friday 14 October 2005.
10. The prize given away is the Limited Edition Harley Davidson Fat Boy (same as picture shown).
11. The winner will be notified telephonically on 14 October 2005.
12. Harley Davidson is not involved in and take no responsibility for this promotion.

4. The competition was to be conducted as follows:

4.1 Regional winners were picked from each of the three types of promotions. Regional winners in each category were eligible for the national draw.

4.2 Each of the three sections of the competition had its own draw for a finalist, resulting in three national finalists for the final draw. The three national winners are then entered in the final draw for the motorbike.

5. First applicant was declared the bottle store finalist, second applicant the party events finalist and third applicant was the DSTV finalist. The finalists were flown to Cape Town to attend the final draw on 20 October 2005. The evening of 21 October 2005 the Applicants were informed by first respondent's representative that there had been a last minute change in the final draw and that second respondent would be allowed into the final draw for the prize.

The Party Event Winner: Second Applicant

6. Second applicant purchased a Jack Daniels drink at a licensed club in East London named Numbers. He was given an entry card which he completed for the draw after he purchased a Jack Daniels drink. The entry card for the party event as published by first respondent states that "*Jack will choose one lucky person tonight who will go through to the next round on the road to winning the Limited Edition Harley Davidson.*"

7. His name was drawn as a winner and he won a hamper containing various Jack Daniels products. The hamper also contained an invitation to the next round. He attended two other party events which were held at clubs Tapas Al Sol and Tobi Joe's in Port Elizabeth. Hampers were handed out to the winner at all the events he attended. Three weeks after winning at Numbers he attended the regional draw for the Eastern Cape regional winner. The Jack Daniels representatives were present at the draw as well as the party winners from the other clubs. The winner from Giovanni's was an unknown female. The names of the four party events winners from Numbers, Giovanni's, Tapas Al Sol and Tobi Joe's were placed in the draw and his name was drawn as the Eastern Cape winner.

8. There was a further draw from the names of the provincial winners at which he was not present. He was notified before 14 October 2005 that his name was drawn as the national winner in the party event division of the competition. He was notified by first respondent that there were three finalists in the final draw which will be held in Cape Town.

The Fourth Finalist: Second Respondents Entry

9. On 16 September 2005 second respondent was having a drink at Giovanni's when he was made aware that there was a Jack Daniels competition. He immediately bought a Jack Daniels and entered his name and details for the promotional draw.

10. Mr William Wilson, a representative of first respondent administered the draw. Second respondent was present at Giovanni's when his name was drawn. He was congratulated by many people, including the alleged owner of Giovanni's, Ralph Reilly. According to second respondent nothing further was done and he was not called on to the stage. His understanding was that he went through to the next round.

11. Subsequent to the draw second respondent was advised by Ralph Reilly that he was in contact with Wilson, and that Wilson appeared somewhat evasive and was not happy that second respondent had won the draw. Second respondent contacted first

respondent's Cape Town representative who indicated that the final draw is due to take place within a day or so in Cape Town. Second respondent expressed his astonishment that he had won the Giovanni's party event draw in Port Elizabeth, but was denied the opportunity to participate further in the regional and national draws. First respondent's representative undertook to investigate the matter and subsequently agreed to include second respondent in the final draw.

12. According to second respondent one of the promotional guests persuaded Wilson that she should be the Giovanni winner. Apparently Wilson acceded to this request and the anonymous Giovanni winner was entered into the regional draw. Her name was not drawn at this event and she failed to move on to the next national round. The applicants dispute this version of events and referred the court to newspaper reports in which the following statements were attributed to second respondent:

“confusion came when Ioannides name was drawn at Giovanni's and he did not come forward at the time. The next day at RGBC offices another name was drawn, a woman who went on into the regional draw but did not win.”

13. Applicants aver that second respondent took no action to investigate his alleged exclusion after he was advised by Reilly that Wilson was evasive. According to Reilly he phoned Wilson “a week or so” after the draw. Applicants allege that second respondent had deliberately waited until the final draw and then demanded from first respondent to be included as a finalist. Thereafter first respondent had agreed to allow second respondent to enter following threats of legal action.

14. Second respondent denies that he threatened first respondent. However, he admits that he did express the view to first respondent that it was duty bound to place him in the final draw due to the fact that he won at Giovanni's. He informed first respondent that his exclusion was unfair and if the matter was not addressed, he would consider seeking legal advice.

15. According to applicants they were expressly informed that there were only three finalists who were selected by first respondent on or before 14 October 2005 for the final draw to be held on 21 October 2005. However, on the evening of 20 October 2005 first

respondent advised them that there was a last minute change and that second respondent would be allowed into the final draw. Applicants objected to the change and the inclusion of second respondent but first respondent's representative persisted that first respondent had the right to permit second respondents inclusion. They further allege that second respondent arrived about a half hour before the final draw. Respondent disputes this and stated that he arrived in Cape Town at least a "good couple" of hours before the draw.

16. The applicants and second respondent were allowed to draw at the final draw on 21 October 2005 and first selected envelopes with numbers that gave the sequence in which the finalists drew. Second respondent was third to draw and drew the key that opened the lock which meant that he won the prize. Second applicant was excluded from drawing a key due to the fact that second respondent drew the correct key and was declared the winner.

17. The main argument of the applicants centred on two grounds upon which it is alleged that second respondent's involvement in the competition is irregular in that:

17.1 Contrary to Regulation 5 of the regulations relating to promotional competitions promulgated in terms of the Lotteries Act no 57 of 1997 ("the Act") in terms of Government Notice R672 in Government Gazette 24874 of 16 May 2003 (*"the regulations"*) the participation of the second respondent in the competition was prohibited by virtue of the fact that the licensed premises at which the competition was held, being Giovanni's in Port Elizabeth, was one in respect of which the second respondent held one or more of the precluded positions referred to in Regulation 5; and

17.2 the method of including second respondent in the final draw was contrary to the rules of the competition.

18. Regulation 5 states that:

1. A person who is –

- (a) a director, member, partner, employee or agent of or consultant to a promoter; or
- (b) a spouse, life partner, parent, child, brother, sister, business partner or associate of a person contemplated in paragraph (a)

may not participate in a promotional competition held by that promoter.

In terms of the rules of the competition a business partner, or associate of first respondent or their advertising/promotional agencies are prohibited from entering the competition.

19. Second respondent contends that first respondent organized, conducted and promoted the promotional competition. He denies that he was associated with the management and execution of the competition. He avers that the promoter is the entity for whose benefit the promotional competition is held and in this instance it can only be the first respondent. It was contended that if second respondent cannot directly or indirectly be defined as the promoter, he cannot be classified as a prohibited participant in terms of Regulation 5.

20. Second respondent further avers that there is no merit in the submission that he acted as an agent of the promoter. The draw at Giovanni's was made under the supervision of Wilson, a representative of first respondent. According to second respondent Wilson is the only person who could qualify as an agent in terms of the regulations.

Ownership of Giovanni's and the liquor licence

21. On second respondents own version, Giovanni's at Shop 12A Dolphin's Leap was rented by Cousin Barry's CC of which he and Barry Hilton were members. The lease was entered into early 2003 and expired on 30 September 2005. As a result of difficulties in the business they closed it down in May 2003. By agreement with Ralph Reilly and his partner Van Der Hoogen, they executed a sub-lease with the consent of the landlord, in terms whereof Reilly and Van Der Hoogen assumed all of the obligations of Cousin Barry's for the remainder of the lease period. In terms of the agreement the fixed assets of Giovanni's were owned by second respondent and would be rented to Reilly and Van Der Hoogen for R10 000,00 per month. It was also agreed that the liquor licence which was registered in second respondent's name, would be transferred to Reilly and Van Der Hoogen. Pending transfer of the liquor licence they would continue to trade on the existing licence.

22. Second respondent contends that since 1 June 2003 he has had no business interest in Giovanni's. Save for the fact that he remained surety in terms of the original

lease, and that the liquor licence was in his name as explained, the allegation that he has a direct or indirect interest in the business of Giovanni's is without foundation. According to second respondent the fact that the assets of Giovanni's were owned by him in terms of a lease agreement is of no consequence to this application.

23. Further developments followed in respect of the business at Giovanni's. The partnership between Reilly and Van Der Hoogen was converted into a close corporation (Gio's Cocktail Café CC) and the parties parted ways. Kirsty Muller and Ralph Reilly became the new members of Gio's Cocktail Café cc. On 16 August 2005 an agreement was entered between Gio's Cocktail Café cc and second respondent in the following terms:

23.1 Reilly would negotiate with the landlord and take over the existing lease to release second respondent from his suretyship.

23.2 Reilly would no longer pay rental to second respondent, but purchase the equipment for the sum of R380 000,00. This amount was payable on 1 October 2005.

23.3 The liquor licence will be transferred to Reilly at his own expense.

24. Reilly submits that it was due to an administrative oversight on his part that the liquor licence was not transferred in his name. He confirmed that second respondent had no direct or indirect interest in Giovanni's and did not share in its management, its profits or its losses. Reilly confirmed that second respondent was on the premises when his name was drawn at the Jack Daniels promotional party at Giovanni's. He also confirmed that he had spoken to Wilson about a week after the draw and that Wilson seemed evasive. He construed that Wilson was not happy that second respondent had won the draw.

25. It is common cause that at the time of entering the promotional competition on 16 September 2005 second respondent was still the owner of the assets of the business Giovanni's, the registered holder of the liquor licence, and was the tenant of the licenced

premises until 30 September 2005 when the lease were taken over by Gio's cc. It is also not disputed that the sale of the business assets on the licenced premises was not finally concluded by 16 September 2005 and that payment of R370 000,00 to second respondent for the purchase of the fixtures and equipment was only due on 1 October 2005.

26. Second respondent does not dispute that he is the registered holder of the liquor licence at Giovanni's, that he owns the assets and fixtures on the premises of Giovanni's and that he sold these to Gio's Cocktail Café in terms of an agreement on 16 August 2005.

27. The contractual agreements between second respondent, Reilly and Van Der Hoogen in 2003 relating to the lease and sub-lease of the premises and the lease of the equipment and fixtures at Giovanni's were in effect going to continue until 1 October 2005 as amended in the document dated 17 August 2005. The amended agreement provides for Gio's Cocktail Café to enter into a new lease with the landlord after termination of the sub-lease in favour of Reilly, as well as the sale of the equipment and liquor licence of Giovanni's. It was agreed that ownership of the equipment will be effective against payment of the purchase price on 1 October 2005.

28. With reference to the 2003 and 2005 agreements, the amended agreement states:

“To the extent that it may be necessary the above agreement supersedes provisions of the agreement entered into between Cousin Barry's CC and Damelan Van Der Hoogen and Ralph Reilly dated 5 May 2003.”

The Applicable Law

29. Currently all competitions which involve the promotion of goods or services are regulated by Section 54 of the Lotteries Act 57 of 1997 and its regulations. Legislation dealing with promotional competitions will change once the new Consumer Protection Bill 2007 is enacted. Section 42 of this Bill will regulate promotional competitions in future and take it outside the ambit of the Lotteries Act. The definition clauses of the Lotteries Act relevant to this application are:

29.1 a “promotional competition” is defined as “...a lottery conducted for the

purpose of promoting the sale or use of any goods or services”

29.2 *“goods or services” are defined, as “...goods or services which are ordinarily manufactured, sold, supplied, distributed or delivered or in any other way form a substantial part of the business of the promoter involved in a particular promotional competition in the calendar year during which that promotional competition is held”*

29.3 *“promoter” is defined as “a person who holds, conducts, promotes, organizes or is in any other way directly associated with the management or execution of a promotional competition”*

29.4 *Regulation 4 provides that the rules of a promotional competition relating to the manner and date of announcing the winners of the competition must be published in advertising material promoting that competition.*

29.5 *Regulation 5 prohibits “... any person who is (a) a director, member, partner, employee or agent of or consultant to a promoter; or (b) a spouse, life partner, parent, child, brother, sister, business partner or associate of a person contemplated in paragraph (a) ...” from participating in a promotional competition held by that promoter.*

30. This application relates to a promotional competition organized by the first respondent for the purposes of promoting the sale and use of alcohol under the brand name “Jack Daniels”. The sale and distribution of liquor at Giovanni’s on the day of the promotional competition is regulated by the Eastern Cape Liquor Act 10 of 2003, and prior to this date by the Liquor Act 27 of 1989.

31. The nature of a liquor licence has been comprehensively dealt with by our courts. (See **Fick v Woolcott and Ohlsson’s Cape Breweries Ltd** 1911 AD 214 ; **Pietermaritzburg Corporation v South Africa Breweries Ltd** 1911 AD 501 ; **Receiver**

of Revenue, **Cape v Cavanagh** 1912 AD 459 ; **Solomon v Registrar of Deeds** 1944 CPD 319 ; **Weintraub & Weintraub v Joseph and Others** 1964 (1) SA 750 (W) ; **Bank Station Hotel (Pty) Ltd v Thomas and Others** 1970 (4) SA 411 (T).)

32. In **A-Team Drankwinkel BK en 'n Ander v Botha en 'n Ander NNO** 1994 (1) SA 1 (A) p15 at E – F it was summarized as follows:

“... Die statuut bepaal naamlik dat alleen die houer van die lisensie aansoek om oordrag kan doen. Die regte van die houer word ook ten volle deur die Wet omskryf. Al die regte is statuter van aard. 'n Nie-houer het geen regte nie. Die bevoegheid om toe te stem tot oordrag en om die nuwe delectus personae aan te wys, berus by die owerheidsinstansie.”

33. This view was confirmed in **Aquatour (Pty) Ltd v Sacks and Others** 1989 (1) SA 56(A) at 64 H – 65A where Vivier JA stated the following:

“... A liquor licence, it has been stated in decisions of this Court, is a purely personal statutory privilege granted to a particular person under the liquor laws to sell liquor at particular premises. Its grant involves the exercise by the licensing authorities of a *delectus personae* so that the licensee cannot transfer or otherwise deal with the licence unless authorised thereto in terms of the Act, which provides for the strict supervision of the grant, transfer and removal of licences. (See **Fick v Woolcott and Ohlsson's Cape Breweries Ltd** (supra at 230) and **Slims (Pty) Ltd and Another v Morris NO** 1988 (1) SA 715 (A) at 736 I– 737B). Nevertheless, as I have pointed out, our Courts have recognised contractual obligations such as the one under consideration and have ordered specific performance thereof”.

34. In **Bank Station Hotel (Pty) Ltd v Thomas and Others** 1970 (4) SA 411 (T) at 416 A-C Colman J stated the following principle relating to the rights of a lessee under a lease agreement of a hotel and the liquor licence:

“... no one other than the licensee can be the owner of the licence. The references, in the lease and the affidavits, to the licence as the property of the applicant are therefore legally unsound.”

35. Section 22(11) of the Eastern Cape Liquor Act and Section 113 of the 1989 Act states that the licence holder may at any time make application to the board to transfer the licence to another person. The application procedure for such transfer is regulated by Section 22. The licence board is vested with the power to consent to the new *delectus personae* upon the satisfaction of the registration requirements.

36. From these judgments it is clear that a liquor licence is a statutory privilege granted to a particular person under the liquor laws. The Licence Board is vested with the power to consent to a new *delectus personae* in compliance with the Liquor Act. The licensee is not entitled to deal with the licence contrary to the provisions of the Liquor Act. Second respondent's contention that he does not own any liquor business, despite being the registered holder of the liquor licence at Giovanni's cannot be sustained. This assertion must be viewed against the background of a sub-lease agreement for the premises as well as a R10 000,00 per month arrangement for the fixtures and fittings.

37. A controlling interest in relation to a business or undertaking is defined as “any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking” (See: Section (2) of the Liquor Act 27 of 1989; section (1) of the Eastern Cape Liquor Act 10 of 2003 and section (1) of the Maintenance and Promotion of Competition Act 96 of 1979 as incorporated in the Competition Act 89 of 1998). Section 34(1) of the Eastern Cape Liquor Act and Section 38(1) of the 1989 Liquor Act states:

“A registered person must not permit any other person to procure a controlling interest in a business to which the registration relates, unless the chairperson of the board has, on application by the registered person, granted consent that the other person may procure that interest in the business.”

38. It is not disputed that Giovanni's was acquired and managed by Reilly and Van Der Hoogen since June 2003. On respondents own version the prescribed consent was not obtained to enable Reilly and Van Der Hoogen to directly or indirectly exercise control over the activities or assets of Giovanni's. The consequences of non-compliance with the provisions of Section 38 have been considered in **Klokow v Sullivan** 2006 (1) SA 259 (SCA) where Cachalia AJA held at 264A that:

- (a) Non-compliance with the provisions of Section 38 (1) of the Liquor Act 27 of 1989 rendered the agreement illegal.
- (b) The agreement was consequently void in accordance with the provisions of Section 148 of the Act which provides that "a contract which contains a provision whereby a person purports to relinquish or forgo a right, privilege obligation or liability in terms of the Act, shall be void".

39. Non-compliance with this provision impacts on the actual ownership of Giovanni's. The argument that full ownership vested in Reilly and Van Hoogen cannot be sustained. Second respondent was the legitimate holder of the liquor licence at Giovanni's and remained responsible for the management of the business. Second respondent therefore remained inextricably linked to Giovanni's in the absence of compliance with this provision.

CONCLUSION

40. The promotional competition was held in terms of Section 54 of the Lotteries Act and the regulations for promotional competitions. Regulation 5 prohibits specific categories of persons from participating in promotional competitions. These categories relates to certain relationships with the promoter. The competition rules, in compliance with Regulation 5, made provision for those prohibited categories.

41. The nature of the promotional goods in this matter was liquor under the brand name "Jack Daniels". It appears that the promotional competition was calculated to promote and encourage additional sales of the Jack Daniels brand. A liquor licence is an essential requirement for the Jack Daniels promotional competition. The promoter could only conduct the competition at Giovanni's under the licence of second respondent's liquor licence, failing which the sale of liquor at this event would have been unlawful and illegal.

42. It is not disputed by second respondent that the bar staff at Giovanni's exercised control over the tickets which were handed out to those who qualified on purchasing a Jack Daniels drink. The staff at Giovanni's were directly associated with the management of the draw by controlling the entry tickets. First respondent conducted and administered the draw after receipt of the tickets.

43. Second Respondent effectively utilized his own liquor licence to purchase a drink at his licenced establishment (Giovanni's), received a scratch card which was controlled by his licenced establishment and consequently became eligible for the lucky draw. By the introduction of Regulation 5 the legislature must have intended to protect consumers from misleading, deceptive, fraudulent and unfair conduct in competitions of this nature.

44. At the time of the competition second respondent was directly linked to Giovanni's in the following respects:-

44.1 He was the lessee of the premises which was sub-let to Ralph Reilly since 2003. The nature of the sub-lease enabled Ralph Reilly to continue to conduct the liquor business at Giovanni's.

44.2 He was the owner of the assets and fixtures of Giovanni's which were leased by Ralph Reilly up to 30 September 2005.

44.2 He was a party to the agreement of sale between Giovanni's, Cousin

Barry's cc and Gio's Cocktail Café in terms of which latter was to acquire the assets of Giovanni's on payment of R380 000,00 on expiry of the existing lease on 1 October 2005.

44.3 Second respondent was the registered holder of the liquor licence for the Giovanni's premises at the time of the promotional competition.

45. In allowing the Jack Daniels promotion at Giovanni's I conclude that second respondent firstly, was closely connected to the promotional competition, secondly was closely associated with the business arrangement of the promoter and thirdly, Second Respondent and Reilly both had business interests in Giovanni's. This would be sufficient for second respondent to fall within the categories envisaged in Regulation 5. These categories seek to prohibit people closely connected to the promoters from participating in promotional competitions. To my mind the promotional competition could not have happened in the absence of a business relationship between the promoter and Giovanni's of which Second Respondent is the licensee. In view of the above I am accordingly satisfied that the second respondent is a prohibited participant as referred to in Regulation 5 of the Lotteries Act, as well as the rules of the competition. On this basis alone he was not eligible to participate in the promotional competition.

46. Should I be wrong in this conclusion, I deal with the question of legitimate expectation. Advertising a promotional contest to the public is in its nature an offer. An enforceable contract is formed when a party accepts that offer. The participant becomes eligible for winning a prize or consideration by entering the competition and complying with all the terms of the offer. In order to maintain the integrity of the competition winner eligible requirements are set out in the rules. The rules of the competition were published in accordance with Regulation 4. In this instance an entry card was issued to participants who purchased a drink which is valid for a lucky draw. In the party event promotion, one lucky person was to be selected to move on to the next round at each party. The rules provided for only one party event winner to move to the final round since this was one of the three ways to get lucky. The other two ways were by virtue of the DSTV and bottle store competitions.

47. In purchasing the Jack Daniels drink, and entering the lucky draw, the participant agrees to be bound by the rules. The rules are designed to ensure equality in the

treatment of contestants. Entrants should enjoy the same odds to move to the next level of the game. It is a fundamental requirement of the game that eligibility for the Harley Davidson motorbike requires participation at different levels. A participant will generate the vested right to the final draw when all conditions precedent has been fulfilled. A party event winner is selected, and thereafter participation in the regional draw is required. Only the regional winner is eligible for the grand prize. A national winner is selected out of all the regional winners.

48. A reasonable person, applying the official rules, would legitimately have expected all finalists to have been selected after surviving this rigorous process. A reasonable person would also have expected three participants in the final draw to give credence to the catchphrase "*three ways to get lucky*". Judges had the discretion to determine winner eligibility. It appears that Wilson has exercised his discretion at the draw not to accept the second respondent as the party event winner. As a result of this decision, the competition rules were modified to accommodate second respondent as a second party event finalist. Second respondent did not legitimately qualify to be a finalist, and his selection was not in compliance with the contest rules. This belated modification of the rules was done in an unreasonable and arbitrary manner to the detriment of all contestants. This approach allows for disparities in the treatment of contestants and compromised the fairness and integrity of the competition. I am therefore of the view that on this basis alone the second respondent was not eligible for the final draw. I am accordingly of the view that it would be just and equitable if the final draw is conducted *de novo*, excluding the second respondent.

In the circumstances the following order is made:

1. Second Respondent's participation in the promotional competition held by First Respondent in September and October 2005 is hereby declared contrary to the provisions of Regulation 5 of the Lotteries Act 57 of 1997.
2. The participation of the Second Respondent in the final draw of the Promotional Competition is declared invalid in terms of First Respondent's rules

of the Promotional Competition published under Regulation 4 of the Regulations regulating Promotional Competitions.

3. First Respondent is hereby ordered to conduct a final draw in respect of the said Promotional Competition in such a manner as to comply with the Rules of the Promotional Competition published in terms of Regulation 4 of the Lotteries Act.

4. Second Respondent is ordered to pay the costs of this application.

GOLIATH, J