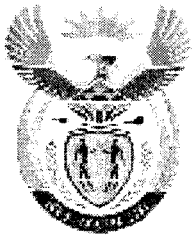

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 3767/2010

In the matter between:

ANDRÉ DE VOS STRYDOM	Applicant
and	
WALTER BADER	Respondent

JUDGMENT : 4 MAY 2010

TRAVERSO, DJP:

[1] This is an application in terms of Section 34(1)(a) of the Trade Marks Act, No. 194 of 1993 ("*the Act*") for an interdict to restrain the respondent from using the applicant's registered trade mark *Late Havest Sunrise/Sonstraal.*

[2] The applicant is the registered owner of the trade mark known as Late Havest Sunrise/Sonstraal and the sun device, which is registered under number 2004/13744 class 33 in respect of alcoholic beverages excluding beer (hereinafter referred to as "*the mark*").

[3] Two points *in limine* were raised. One of them is that of non-joinder. In view of the conclusion to which I come, it is not necessary to deal with the other.

[4] It is common cause that the respondent is a member of two closed corporations namely Viva Africa Wines CC, trading as WK Wines and Salesmax 18 CC, trading as the Railway Bar & Liquor Store. It is not disputed that Viva Africa Wines CC has a national distribution licence. The respondent contends that any manufacture, packaging, marketing or sales of the wine – including the so-called Late Harvest Sunrise/Sonstraal product – was sold under this licence. W.K. Wines in turn sells the product in question to the Railway Bar and Liquor Store. Accordingly, it is contended by the respondent that Viva Africa Wines CC and Salesmax 18 CC have a direct and substantial interest in the matter inasmuch as they, admittedly, sold wine bearing the mark.

[5] The applicant does not dispute any of the abovementioned facts. Instead the applicant is content with relying on certain correspondence which took place between

the attorneys of the respective parties where the respondent's attorney stated that the respondent, was the person who used the mark and accordingly contends that the respondent is "*estopped*" from denying that he personally was the person using the mark. This argument is without substance. It is trite that it is essential to join all parties that may have an interest in the matter. In such circumstances a Court has no discretion and cannot permit a matter to proceed without a joinder, or at the very least, notice of the proceedings. The reason for this is obvious – it is a principle of our law that interested parties should be afforded an opportunity to be heard in matters where they have a direct and substantial interest. (See *Ex parte* Body Corporate of Caroline Court, 2001(4) SA 1230 (SCA) at 123 A-F.)

[6] It is not disputed that WK Wines, as a fact marketed wine upon which a label bearing the mark was displayed. It is also not disputed that WK Wines supplied wine products

bearing the mark to Salesmax 18 CC. It is therefore self-evident that both these entities have a direct and substantial interest in this matter.

[7] This matter can therefore not be dealt with on the merits without the two entities referred to being joined. The applicant in fact launched an application for the joinder of these entities, but, ill-advisedly, withdrew it before it was heard.

[8] In the circumstances the application is dismissed with costs.

TRAVERSO, DJP