



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No 2966/10

In the matter between:

**SEA HARVEST CORPORATION
(PTY) LIMITED**

Applicant

and

**IRVIN & JOHNSON LIMITED
JUNO FINANCE COMPANY LIMITED**

First Respondent
Second Respondent

Court: CLOETE, AJ

Heard: 4 March 2011

Delivered: 17 March 2011

ADV. FOR APPLICANT:

Adv D R Harms

INSTRUCTED BY:

Cliffe Dekker Hofmeyr Inc (Eben van Wyk)

ADV. FOR RESPONDENT:

Adv C M Eloff, SC

INSTRUCTED BY:

Adams & Adams (Suzaan Laing)



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JUDGMENT

CLOETE AJ:

INTRODUCTION

[1] This is an urgent application in which the applicant claims that the first respondent is unlawfully passing-off one of its range of products as being that of the applicant's.

[2] The applicant and first respondent are both Cape Town based companies which compete in the frozen and added-value (i.e. prepared fish) industry. The second respondent is a Mauritian company which owns a number of registered trade marks in South Africa which it licences to the first respondent.

[3] The applicant seeks an order that the first respondent be interdicted and restrained from (a) unlawfully competing with the applicant by passing-off its *Oven Crunch* product as being that of, or associated with, the applicant's *Oven Crisp* product; or (b) using any get-up which is confusingly or deceptively similar to the applicant's *Oven Crisp* get-up; and (c) costs. Both respondents oppose the application.

THE FACTS

[4] The material facts which are common cause or which are not seriously disputed by the respondents are the following.

[5] The applicant and first respondent have been direct competitors in the fish industry for at least the past 20 years. Both produce a variety of fish products which are separated into different product ranges, each with its own style of packaging to distinguish one range from the other.

[6] The packagings of the competing products have historically always been distinguishable from each other through differences in font, weight, colour and the like. Products falling into a specific range of one competitor are generally packaged in a similar fashion so as to allow a consumer to

classify the product by sight, not only as part of a specific range, but also to distinguish the products from that of the competitor.

[7] The second respondent is the applicant for registration of trademark number 2010/25859-60 I&J OVEN CRUNCH in classes 29 and 30. These trademark applications were filed in November 2010 and are still pending. The applicant will oppose these trademark applications if and when accepted by the registrar of trade marks.

[8] The applicant is, according to AC Nielsen figures, the market leader in the South African frozen fish market with an approximately 46% market share in this category. First respondent has an approximately 44% market share in the same category.

[9] The applicant's *Oven Crisp* product range has always competed with the first respondent's *Light & Crispy* product range in the coated segment of the frozen fish ("added-value" fish) market in South Africa.

[10] The applicant's *Oven Crisp* and the first respondent's *Light & Crispy* product ranges have been competing head to head for approximately 20 years in South Africa.

[11] The applicant has used the mark *Oven Crisp* continuously for approximately 20 years in relation to its crumbed fish fillet product in South Africa. The applicant uses the name as a trade mark; although the respondents contend that the trade mark that the applicant has used (and still uses) is the mark SEA HARVEST OVEN CRISP. (My emphasis.)

[12] The sales figures of *Oven Crisp* products in South Africa are significant. Approximately 950 000kg (950 tons) of *Oven Crisp* products (equating to 2 375 000 boxes of the product) to the value of at least R51 million are sold annually in South Africa.

[13] The total direct advertising, marketing and promotion costs in respect of the *Oven Crisp* mark and get-up in South Africa are also significant.

[14] The first respondent's *Oven Crunch* product was launched in direct competition to the applicant's *Oven Crisp* product during the second week of February 2011 (although there is a minor dispute about the exact date). The applicant directed a "cease and desist" letter to the first respondent (through its attorneys) as soon as it became aware of the launching of the first respondent's new product. The first respondent refused to comply with the applicant's demands, resulting in the present application.

ISSUES TO DETERMINED

[15] The first issue which I am called upon to determine is whether the get-up of the first respondent's *Oven Crunch* product is such that there is a reasonable likelihood that members of the public may be confused into believing that this product of the first respondent is, or is connected with, the *Oven Crisp* product of the applicant.

[16] The second issue relates to the second leg of the relief sought by the applicant, namely whether it is entitled to an interdict against the first respondent from using any get-up which is confusingly or deceptively similar to the applicant's *Oven Crisp* get-up and trademark. The respondents argue that this portion of the relief sought by the applicant is not determinative of any question or issue and is likely, were it to be granted in those terms, to result in further litigation between the parties. The respondents submit that a prohibitory interdict must be in a form that is reasonably precise, so that a respondent can know what it is prohibited from doing under threat of criminal sanction. An order which is vague would in turn result in a criminal prohibition which is vague and indeterminate and, moreover, would lead to further conflict with regard to its interpretation.

THE LEGAL POSITION

[17] During the course of argument the parties were *ad idem* that the interdictory relief sought by the applicant is final in nature. The applicant argued that the *Plascon-Evans* rule (*Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Limited* 1984 (3) 620 (AD) at 634E-635C) does not apply as there are no material disputes of fact on the papers before me. The applicant submits that the only "disputes of fact" relate to the respondents' insistence that first respondent is not unlawfully passing-off the applicant's *Oven Crisp* product.

[18] The respondents on the other hand argue that the *Plascon-Evans* rule must apply, namely that where there is a dispute as to the facts (which the respondents submit is indeed the case in the instant matter) a final interdict should only be granted in motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order: see *BHT Water Treatment (Pty) Limited v Leslie and Another* 1993 (1) SA 47 (W) at 55A-D.

[19] In my view, the applicant is correct. The disputes of fact really do only relate to whether or not the first respondent is passing-off the applicant's product. As will be seen from what follows hereunder, this is an issue which the court is called upon to decide, and not one to be determined by reference to the respondents' version (together with the facts admitted by the applicant) as set out in the respondents' papers.

[20] Passing-off interdicts protect the goodwill or reputation of a trader's business, merchandise or services against a false representation by a competitor that the business, merchandise or services of the competitor are that of, or associated with, the applicant. They also provide protection against deception as to trade source or trade connection. In *Premier Trading Co (Pty) Ltd and Another v Sporttopia (Pty) Ltd* 2000 (3) SA 259 (SCA) at 266H-I the court put it thus:

'Passing-off is a wrong consisting of a false representation made by one trader (the defendant) to members of the purchasing public that the enterprise, goods or services of a rival trader (the plaintiff) either belong to him (the defendant) or are connected, in the course of trade, with his own enterprise, goods or services. (I shall abbreviate, for the sake of convenience, 'enterprise, goods or services' to the single term 'the product' since this is a case of 'product confusion' rather than 'business connection confusion'.) The defendant's representation is a misrepresentation if it is likely to deceive or confuse a substantial number of members of the public as to the source or origin of his product. Passing-off, to be actionable, erodes the plaintiff's goodwill.'

[21] Accordingly, the test whether a false representation amounts to passing-off is whether there is a reasonable likelihood that substantial members of the public may be confused into believing that the business or product of one trader is, or is connected with, that of another.

[22] The representation must be both false and unauthorised. The typical case of passing-off is when the competitor uses, adopts or imitates the trade name or get-up of the other's business, goods or services. The trade name, trade mark, get-up or service mark must be known in the market and the applicant's goods, business or services must have acquired a public reputation or have become distinctive from other similar goods, businesses or services. As stated by the court in *Die Bergkelder v Delheim Wines (Pty) Ltd* 1980 (3) SA 1171 (CPD) at 1179H-1180A:

'In passing-off matters based on the use of a given get-up as in the present case, it is essential for the success of such a claim to show that the disputed get-up has become by user distinctive of applicant's goods, so that the use in relation to any goods of the kind dealt with by applicant of that get-up will be understood by the trade and public as meaning that the goods are applicant's goods.'

[23] Whether in any particular case there has or has not been passing-off is in substance a question of fact, and therefore each case must be decided on its own particular facts. In every case the court will enquire whether the

competitor has sufficiently distinguished his goods by the get-up of such goods, so that an ordinary reasonably observant purchaser can see that there is sufficient distinction between the goods of the rival traders: see *Policansky Bros., Limited v L&H Policansky* 1934 (AD) 89 at 104.

[24] Whilst each case must be decided on its own facts "*there are undoubtedly cases where the manner and scale of use of the symbol in question can in itself be sufficient to warrant the conclusion that it must have become recognised by a substantial section of the relevant public as distinctive of the plaintiff's goods, services or business. That conclusion has been drawn from such evidence in a number of cases*"; see *Cambridge Plan AG and Another v Moore and Others* 1987 (4) SA 821 (D & CLD) at 837D.

[25] The competitor's get-up or trade name must be calculated or likely to deceive or confuse the ordinary customer and thus cause confusion and damage to the goodwill of the other's business by, for example, diverting customers from the latter's business or product to that of the former. However, an applicant need not show that the respondent intended to deceive. In *Reckitt & Colman SA (Pty) Ltd v S C Johnson & Son SA (Pty) Ltd* 1993 (2) SA 307 (AD) at 315 C, the court in dealing with what is meant by "*calculated to deceive*" stated that this means "*that there was a reasonable likelihood that members of the public would be so deceived by the representation*".

[26] Proof of a common field of activity is a factor which the court may take into account when considering whether the respondent's conduct is likely to lead to confusion between the parties' goods or businesses. However, it is not an overriding factor since whether there is a reasonable likelihood of confusion arising is a question of fact which will have to be determined in the light of the circumstances of each case. "*If the evidence establishes that there is a reasonable likelihood of such confusion arising even if the parties concerned cannot be said to be carrying on their activities in a common field, it is difficult to see how the absence of such a common field can nevertheless*

constitute a ground for denying relief to an aggrieved party.” See Capital Estate and General Agencies (Pty) Ltd v Holiday Inns Inc and Others 1977 (2) SA 916 (AD) at 929E.

[27] As to whether there is a reasonable likelihood that members of the public may be confused into believing that the business or product of one trader is, or is connected with, that of another, the court in *Blue Lion Manufacturing (Pty) Ltd v National Brands Ltd* 2001 (3) SA 884 (SCA) at 887D-G set out the principles succinctly as follows:

‘When one is concerned with alleged passing-off by imitation of get-up, as is the case in the matter before us, one postulates neither the very careful nor the very careless buyer, but an average purchaser, who has a general idea in his mind’s eye of what he means to get but not an exact and accurate representation of it. Nor will he necessarily have the advantage of seeing the two products side by side. Nor will he be alerted to single out fine points of distinction or definition. Nor even, as pointed out by Greenberg J (from whom I have been quoting) in *Crossfield & Son Ltd v Crystallizer Ltd* 1925 WLD 216 at 220, will he have had the benefit of counsel’s opinion before going out to buy. Nor will he necessarily be able to read simple words, as there are distressingly many people in South Africa who are illiterate.

However, the law of passing off is not designed to grant monopolies in successful get-ups. A certain measure of copying is permissible. But the moment a party copies he is in danger and he escapes liability only if he makes it ‘perfectly clear’ to the public that the articles which he is selling are not the other manufacturer’s, but his own articles, so that there is no probability of any ordinary purchaser being deceived: *Pasquali* at 479, *Crossfield* at 221 and *Adcock-Ingram Products Ltd v Beecham SA (Pty) Ltd* 1977 (4) SA 434 (W) at 437F-438A.’

[28] In considering whether there is an imitation of a distinctive get-up, “*it should be remembered that the likelihood of confusion or deception is a matter for the Court and that the judgment of the Court must not be surrendered to any witness*”: see the *Reckitt & Coleman* case at 315D. The court must “*notionally transport (itself) to the marketplace ... and consider*

whether the average customer is likely to be deceived or confused.": see the *Plascon-Evans Paints Ltd* case at 642E.

[29] Thus, as stated by the court in the *Blue Lion Manufacturing (Pty) Ltd* case at 886G-I:

'A record of 720 pages and heads of argument totalling 57 pages have been placed before us in order to allow us to decide whether the wrapping of its coconut biscuits used by one manufacturer passes itself off as the wrapping of another manufacturer of similar biscuits. I acknowledge, of course, that an applicant in a passing-off case must prove his reputation and that that may require a considerable body of evidence, that it behoves him to prove instances of actual deception or confusion if such evidence may be found (one instance was raised in this case), and that the applicant sought to prove fraudulent intent, as it was entitled to do. But for the rest the case was essentially one of first impression of the two wrappers.' (My emphasis.)

[30] The doctrine of imperfect recollection is also relevant to a determination of passing-off. This doctrine refers to the rule that when a registrar of trademarks or a court compares trade marks to decide whether there exists a likelihood of confusion or deception, it must not only consider the marks when placed side by side but must also consider the position of a person who may at one time see or hear one of the marks and later, possibly with an imperfect recollection of that mark, come across the other mark: see *Law of South Africa* – Volume 29 – Second Edition Volume – Trade marks – para 127 and the authorities referred to therein.

[31] In *Re: Rykstra Ltd's Application* (1943) 60 RPC 97 108 line 39 the court stated the following:

'It is the person who only knows the one word, and has perhaps an imperfect recollection of it, who is likely to be deceived or confused. Little assistance therefore is to be gained from a meticulous comparison of the two words, letter by letter and syllable by syllable pronounced with the clarity to be expected from a teacher of

elocation. The court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part not only of the person seeking to buy under the trade description but also of the shop assistant ministering to the person's wants.' (As quoted in Webster *South African Law of Trade Marks* at 7.7. referring to the case of *De Cordova v Vick Chemical Co* 1951 68 RPC 103 at 106.)

[32] The test is described by the learned author in *South African Law of Trade Marks* as whether it is likely that a person who has seen or knows one of the marks, will, by reason of the general impression made upon his mind, think, when he sees the other, that they are or may be the same. (It should be noted however that this doctrine was dispensed with in relation to design law – which is not applicable in the instant matter – in *Clipsal Australia (Pty) Ltd v Trust Electrical Wholesalers* 2009 (3) SA 292 (SCA).

[33] It should also be noted that the effect of imperfect recollection must also be taken into account when comparing trade marks: see *Adidas Sportschuhfabriken Adi Dassler KG v Harry Walt & Co (Pty) Ltd* 1976 (1) SA 530 (T) at 536B.

[34] The doctrine of imperfect recollection is embodied in the *Plascon-Evans Paints v Van Riebeeck Paints Ltd* case at 640 G - 641 E as follows:

'In the infringement action the onus is on the plaintiff to show the probability or likelihood of deception or confusion. It is not incumbent upon the plaintiff to show that every person interested or concerned (usually as customer) in the class of goods for which his trade mark has been registered would probably be deceived or confused. It is sufficient if the probabilities establish that a substantial number of such persons will be deceived or confused. The concept of deception or confusion is not limited to inducing in the minds of interested persons the erroneous belief or impression that the goods in relation to which the defendant's mark is used are the goods of the proprietor of the registered mark ; ie the plaintiff, or that there is a material connection between the defendant's goods and the proprietor of the registered mark ; it is enough for the plaintiff to show that a substantial number of

persons will probably be confused as to the origin of the goods or the existence or non-existence of such connection. The determination of these questions involves essentially a comparison between the mark used by the defendant and the registered mark and, having regard to the similarities and differences in the two marks, an assessment of the impact which the defendant's mark would make upon the average type of customer who would be likely to purchase the kind of goods to which the marks are applied. The notional customer must be conceived of as a person of average intelligence, having proper eyesight and buying with ordinary caution. The comparison must be made with reference to the sense, sound and appearance of the marks. The marks must be viewed as they would be encountered in the market place and against the background of relevant surrounding circumstances. The marks must not only be considered side by side, but also separately. It must be borne in mind that the ordinary purchaser may encounter goods, bearing the defendant's mark, with an imperfect recollection of the registered mark and due allowance must be made for this. If each of the marks contains a main or dominant feature or idea the likely impact made by this on the mind of the customer must be taken into account. As it has been put, marks are remembered rather by general impressions or by some significant or striking feature than by a photographic recollection of the whole. And finally consideration must be given to the manner in which the marks are likely to be employed as, for example, the use of the name marks in conjunction with a generic description of the goods.' (My emphasis.)

EVALUATION

[35] At the outset it should be mentioned that the applicant was criticized by the respondents for not placing any direct evidence before me that members of the public have actually been confused or deceived, since (so it was argued) this would have carried far more weight for the applicant. No doubt this would have been optimal for the applicant; however the fact of the matter is that the applicant approached court on an urgent basis in order to attempt to prevent the very harm which such direct evidence would have confirmed. In the circumstances I do not think that the absence of such direct evidence should count against the applicant.

[36] In my view, the respondents have not placed any real dispute of fact before this court to show that the manner and scale of use of the applicant's mark and get-up of its *Oven Crisp* product has not become recognised by a substantial section of the public as being distinctively that of the applicant's, and the applicant's version must be accepted. As stated by the court in *South Peninsula Municipality v Evans and Others* 2001(1) SA 271 (C) at 283G-H:

'...South African Courts have recognised that, in motion proceedings, disputes of fact cannot necessarily be accepted at face value and that, in each case, the Court should closely scrutinise the alleged issues of fact in order to decide whether there is indeed a dispute of fact that cannot satisfactorily be determined without the aid of oral evidence ... Thus, while the Court should be circumspect in its approach,

"(i)f, on the papers before the Court, the probabilities overwhelmingly favour a specific factual finding, the Court should take a robust approach and make that finding".

[37] It is also clear that the first respondent's *Oven Crunch* product has not been authorised by the applicant. This much is common cause. So too is the fact that both applicant and first respondent are direct competitors in the same (frozen and "added-value" fish) industry, and have been direct competitors for at least the past 20 years.

[38] There is thus only one dispute on the papers that this court, transporting itself into the marketplace as the notional consumer, needs to decide, and that is whether the mark and get-up of the first respondent's *Oven Crunch* product amounts to a passing-off (or, simply put, a false representation) of the applicant's *Oven Crisp* mark and get-up.

[39] In order to place this issue in its proper perspective, it is helpful to have regard to the product ranges of the applicant and first respondent which have historically competed head to head in the marketplace. For ease of reference, photographs of these are reproduced hereunder (although the reproduced photographs are reflected in black and white print, they are reproduced in colour in the electronic version of this judgment):

APPLICANT'S PRODUCTRESPONDENT'S PRODUCT



[40] As is evident from the above photographs (which include the applicant's *Oven Crisp* and the first respondent's *Light & Crispy* ranges) the get-ups of the competing products of the applicant and first respondent have always been clearly distinguishable from each other, specifically through differences in font and colour. This must surely mean that the applicant and first respondent have always been mindful of the necessity to ensure that there is sufficient dissimilarity between their respective products, so as to avoid

confusing members of the public into believing that a product of the one is, or is connected with, that of the other.

[41] The parties are in agreement that the amount of time which a consumer's eye will spend on specific packaging elements is measured in a matter of seconds. Respondents' counsel argued that whilst this is so, "a matter of seconds" is a relative concept and cannot be defined as being a specific number of seconds. However he conceded that it is nonetheless a matter of seconds and not minutes. In short therefore, a consumer will spend a very short period of time looking at specific packaging elements, which of course makes sense.

[42] In my view this must be even more so when considering the purchase of an average, generally available commodity such as packaged frozen or added-value fish. Further, one must have regard to the doctrine of imperfect recollection in assessing the memory of the average consumer purchasing an average, generally available commodity.

[43] Bearing these factors in mind it is necessary to compare the get-ups of the applicant's *Oven Crisp* and the first respondent's *Oven Crunch* products, photographs of which are also reproduced for ease of reference hereunder:

FIRST RESPONDENT'S PRODUCT



APPLICANT'S PRODUCT



[44] Having regard to these two get-ups, my view is best expressed in the words of the court in the *Blue Lion Manufacturing (Pty) Ltd* case at 889D-E, namely that "*when one has regard to the whole get-up, including the colours, the arrangements of matter and the letters, there is an immediate and striking similarity between the rival packaging.*"

[45] Respondents' counsel (understandably) sought to persuade me that the distinctly different logos of the applicant and first respondent is the first difference that a consumer will recognise. That may be so for high end products, but for frozen or add-value fish, a generally available, run of the mill commodity? I do not think so. And what concerns me greatly is the difficulty which I myself had in remembering which product was that of which competitor. Both have dark blue boxes of similar size. Both have yellowish writing with a similar font at the top of each box. Both are called *Oven* "something" and whether the three pieces of similarly shaped fish appear on the left or right hand side of the box, and one has a piece of parsley displayed whilst the other has two lemon wedges displayed, to my mind really does not matter.

[46] I can easily imagine a conversation between two average consumers along the following lines. A tells B about the tasty frozen fish her family had for dinner the evening before. B asks A what type it was. A tells B that she cannot remember exactly, but it was crumbed, came in a dark blue box with yellow writing at the top and was either *Oven Crisp* or *Oven Crunch*. B, on her next trip to the supermarket, will simply not be able to distinguish which packaged fish had been purchased by A, irrespective of whether the boxes are displayed side by side or separately. To my mind, this is a far cry from a comparison of any of the other competing product ranges of the applicant and first respondent, as a glance for a matter of seconds at those products will show.

[47] In my view there is no doubt that the first respondent's get-up and mark of its *Oven Crunch* product is deceptively similar to that of the applicant's

Oven Crisp product, and there is thus a reasonable likelihood that members of the public may be confused into thinking that the *Oven Crunch* product of the first respondent is that of the applicant's. This will clearly impact negatively on the applicant's goodwill, if not its reputation.

[48] Accordingly, the applicant must succeed in the main relief.

THE SECONDARY RELIEF SOUGHT BY THE APPLICANT

[49] The second issue which I am called upon to decide is whether the scope of the relief sought by the applicant is appropriate, namely whether, in addition to being interdicted and restrained from unlawfully competing with the applicant by passing-off its *Oven Crunch* product as being that of, or associated with, the applicant, the first respondent should further be interdicted and restrained from using any get-up which is confusingly or deceptively similar to the applicant's *Oven Crisp* get-up and trademark (it should be mentioned that it was not disputed by the respondents in argument that an applicant is entitled to rely on a common law trade mark in matters of this nature).

[50] Firstly, a perusal of the various decided cases indicates that the secondary relief sought by the applicant is common practice. Indeed, in the case of *Weber-Stephen Products Co v Alrite Engineering (Pty) Ltd and Others* 1992 (2) SA 489 (AD) at 493B-D the appellate division (as it then was) in referring to the proceedings on appeal to the full court, stated the following:

'On 23 March 1989 the Full Court dismissed the appeal. I shall henceforth refer to its judgment simply as the judgment of the Full Court. The Full Court did slightly amend the order granted by Van Zyl J, but this was done only for the sake of clarity. Nothing turns on this amendment. The order, as amended, reads as follows:

"The respondent, its servants and agents, are interdicted from passing off as a
"Weber One Touch Barbecue Grill", by sale, distribution or any other means,

its kettle type barbecue grill known as the "Mirage" or any other grill which embodies a get-up confusingly or deceptively similar to the "Weber One Touch Barbecue Grill" without clearly distinguishing it from the "Weber One Touch Barbecue Grill" of the applicant." (My emphasis.)

[51] Secondly, and as is apparent from the papers before me, the respondents themselves had no difficulty as recently as 1 February 2011 in demanding precisely the same scope of relief from the applicant in respect of an unrelated passing-off dispute. The demand by the respondents (through their attorneys) reads as follows:

'14. Our clients have instructed us to demand, as we hereby do, that you immediately:

14.1 Cease all and any use of the mark FISH BAKES and your Sea Harvest FISH BAKES label (**Annexure "B"**), or labels or marks confusingly or deceptively similar to our clients' I&J FISH BAKES label (Annexure "A"), and confirm this to us in writing;

14.2 Undertake, in writing, never to use the get-up as set out in **Annexure "B"** in relation to any of your products, and, in addition, undertake never to use a label in relation to any of your products which is confusingly similar to our clients' I&J FISH BAKES label, as set out in Annexure "A";' (My emphasis.)

[52] Accordingly, I do not believe that the scope of the relief sought by the applicant is inappropriate, and it thus succeeds in this relief as well.

COSTS

[53] As the applicant has been successful in the relief sought by it, it follows that the respondents should bear the costs of this application.

[54] In the result, I make the following order:

- (1) The first respondent is interdicted and restrained from unlawfully competing with the applicant by passing-off its *Oven Crunch* product as being that of, or associated with, the applicant or using any get-up which is confusingly or deceptively similar to the applicant's *Oven Crisp* get-up and trade mark;
- (2) The first and second respondents shall effect payment of the applicant's costs on a scale as between party and party, jointly and severally, the one paying, the other to be absolved.



J I CLOETE