

House Marks in South Africa

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Louise Myburgh



South Africa's most valuable brands



No distinction between product,
service and house marks in SA

TM





Legal principles



Likelihood of confusion



L.O.C. = Likelihood of Confusion



*Discovery
Holdings Limited*

v

*Sanlam Limited
& Others 2015*

(1) SA 365

(WCC)



ESCALATOR
FUNDS

SANLAM
ESCALATING
FUND



Consumer awareness

Discovery failed to show consumer awareness of the mark ESCALATOR FUND apart from the fame associated with the DISCOVERY mark.



Where sub-brand is descriptive

‘...there is no likelihood of confusion or deception...when the marks ESCALATOR FUNDS and **SANLAM** ESCALATING FUND are compared. The addition of the respondents’ primary mark is sufficient to distinguish the mark from that of the applicant.’





PepsiCo Inc

v

Atlantic Industries

(983/2016) [2017]

ZASCA 109



PEPSI TWIST

TWIST

LEMON TWIST

DIET TWIST




Device mark



TWIST = distinctive

‘The incorporation of the sole distinctive feature of Atlantic’s TWIST marks in the proposed *PEPSI* TWIST marks as an element with no less prominence than the word *PEPSI*...is such as to create a likelihood of deception or confusion.’





Similar
principles
applied as in
the *Medion*
AG case



LIFE

THOMSON

LIFE



Comparison principles

‘It is quite possible that...an earlier mark used by a third party in a composite sign including the name of the company of the third party still has an **independent distinctive role** in the composite sign, without necessarily constituting the dominant element.’



Court's Conclusion:

'The likelihood of deception or confusion was not avoided by inserting *PEPSI* before *TWIST* because the latter word played an independent distinctive role in the composite sign.'





Summary





Thank you

spoor • fisher

patents • trade marks • copyright