



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Reportable

Case No: 1289/2018

In the matter between:

NATIVA (PTY) LIMITED

APPELLANT

and

AUSTELL LABORATORIES (PTY) LIMITED

RESPONDENT

Neutral citation: *Nativa (Pty) Limited v Austell Laboratories (Pty) Limited* (1298/2018) [2020] ZASCA 11 (19 March 2020)

Coram: NAVSA, MOLEMELA and SCHIPPERS JJA, and MOJAPELO and EKSTEEN AJJA

Heard: 2 March 2020

Delivered: 19 March 2020

Summary: Interim interdict pending final interdict and damages claim – unlawful competition – false disparagement of rival trader's goods in advertisement broadcast on national television – initial advertisement withdrawn – advertisement not sufficiently altered – amounting to unlawful competition – interim interdict justified.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Van Der Westhuizen J sitting as court of first instance):

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order of the high court is set aside and replaced with the following:
 - ‘2.1 Interdicting and restraining the respondent from utilising or causing to be flighted the PIASCLEDINE advertisement described in paragraphs 2.10 to 2.12 of the applicant’s replying affidavit as, “*the amended advertisement*” or any part thereof, and/or any colourable imitation thereof, in any manner;
 - 2.2 interdicting and restraining the respondent from competing unlawfully with the applicant by, directly or indirectly, making disparaging and false statements regarding the applicant’s OSTEOEZE products and their ingredients, glucosamine and chondroitin;
 - 2.3 directing that the orders referred to in paragraph 2.1 and 2.2 above operate as interim interdicts, pending the outcome of an action to be instituted by the applicant against the respondent, within 21 days of the date of this order, for interdictory relief and damages based on unlawful competition; and
 - 2.4 directing the respondent to pay the applicant’s costs, such costs to include the costs consequent upon the employment of two counsel.’

JUDGMENT

Schippers JA (Navsa and Molemela JJA and Eksteen and Mojapelo AJJA concurring)

[1] The proscription against unlawfully taking an improper advantage in business is not new. As far back as 1887 De Villiers CJ in *Combrinck*,¹ said:

‘Fair and honest competition, however active, is open to everyone, but no one has the right to take an undue and improper advantage by means of falsehoods, the effect of which is to benefit himself at the expense of another.’

[2] The appellant’s case is that the respondent has done precisely that, by falsely disparaging its product so as to increase its market share in the joint care supplement market in which they are competitors. The appellant, Nativa (Pty) Ltd, is a pharmaceutical marketing and sales company which markets 18 brands covering some 180 health products through leading pharmacies and major retail stores in South Africa, and exports its products to 20 countries worldwide. The respondent, Austell Laboratories (Pty) Ltd, is the largest privately owned pharmaceutical company in South Africa. According to the Nielsen South Africa data, as at August 2017, the appellant had a market share value of R50 664 996 (totalling 38%) in the joint care supplement market, and the respondent, a value of R27 960 496 (totalling 21%).

¹ *Combrinck v de Kock* (1887) 5 SC 405 at 490.

[3] This case concerns the appellant's OSTEOEZE brand of products launched in 1999, more specifically, OSTEOEZE GOLD. It is described as a high potency joint formula in the form of a capsule, containing high dosages of glucosamine and chondroitin (or 'the OSTEOEZE ingredients') which, according to its package insert, assists the body in maintaining healthy cartilage. Many of the leading joint care products internationally and locally, contain some combination of glucosamine and chondroitin. The respondent markets a competing product called 'PIASCLEDINE', manufactured by *Laboratoires Expanscience*, France, and used to relieve symptoms of osteoarthritis, such as pain and difficulties when moving. PIASCLEDINE does not contain either glucosamine or chondroitin.

[4] In February and March 2018 the respondent caused an advertisement of PIASCLEDINE to be broadcast on national television (the initial advertisement) in which the appellant's OSTEOEZE GOLD product was also shown; and which stated, in essence, that glucosamine and chondroitin constituted a health risk to persons suffering from high blood pressure, diabetes, asthma, shellfish allergies and those taking blood thinning medication; and that PIASCLEDINE was the 'only clinically proven osteoarthritis treatment . . . safe to use with other medicine'. The respondent's representatives also used the initial advertisement as part of its training in pharmacies. According to its package insert, OSTEOEZE GOLD should not be used by those allergic to shellfish; and persons using anticoagulant or antiplatelet medication should use the product with caution as glucosamine and chondroitin may have a blood thinning effect. However, the package insert does not state that the product is a health risk or harmful to persons suffering from high blood pressure, diabetes or asthma.

[5] Pursuant to the broadcast of the initial advertisement, on 2 March 2018 the appellant demanded that the respondent immediately withdraw the advertisement; that it furnish a written undertaking that it would not use the

advertisement in future; and that it would destroy all copies thereof. On 6 March 2018 the respondent advised that it would alter the initial advertisement. Despite the appellant's requests, it failed to furnish the appellant with details of such alterations. Subsequently the respondent, without admitting any wrongdoing, undertook to withdraw the initial advertisement by no later than 13h00 on 7 March 2018. However, the advertisement continued to be broadcast until 12 March 2018. The respondent ultimately withdrew the initial advertisement and gave an undertaking that its sales representatives would cease using it as part of any training in pharmacies. Indeed, the respondent threatened the relevant media houses that they would be implicated in these proceedings if they did not immediately withdraw the initial advertisement. Thereafter the respondent altered the initial advertisement by blurring the picture of the OSTEOEZE products so that they were less distinct (the altered advertisement), which repeated the warning that the OSTEOEZE ingredients were a health risk to persons with high blood pressure, diabetes and asthma.

[6] On 16 March 2018 the appellant launched an urgent application in the high court for, inter alia, an interim interdict restraining the respondent from utilising or broadcasting the initial advertisement or any part or colourable imitation thereof; restraining the respondent from competing unlawfully with the appellant by making false and defamatory statements regarding its OSTEOEZE products or their ingredients; and restraining the respondent, in terms of s 23(1) of the Copyright Act 98 of 1978, from infringing the appellant's copyright work in OSTEOEZE GOLD (the package insert), pending the outcome of an action to be instituted against the respondent for unlawful competition and copyright infringement.

[7] The high court dismissed the application, holding that the appellant had failed to show that it had a prima facie right worthy of protection. In a short

judgment the court concluded that a comparison of the two advertisements revealed that the appellant's product was 'not clearly and readily identifiable'; that no direct or indirect reference to the appellant's product could be deduced from the altered advertisement; that the expert opinion on the disadvantages of using products containing glucosamine and chondroitin by patients suffering from high blood pressure, diabetes or asthma was inconclusive; and that it was not possible, on the papers, to attribute any disparaging comments to the respondent regarding the appellant's product. The court found that the appellant had not made out a case of copyright infringement of its package insert in the altered advertisement. The appeal is with the leave of the high court.

[8] Before us counsel for the appellant, advisedly, informed us that it was no longer persisting in its claim for an interdict to restrain the respondent from infringing its copyright. The only issue then is whether the appellant made out a case for an interim interdict based on unlawful competition.

[9] The requisites for the grant of an interim interdict are trite. These are: a prima facie right; a well-grounded apprehension of irreparable harm if the interdict is not granted and the ultimate relief is eventually granted; that the balance of convenience favours the granting of an interim interdict; and that the applicant has no other adequate remedy.²

[10] The right which the appellant asserted was the right to carry on its trade without unlawful interference by the respondent.³ Such interference constitutes 'an *injuria* for which an action under the *lex Aquilia* lies if it has directly resulted

² 11 *Lawsa* 2 ed para 403 at 419.

³ *Matthews and Others v Young* 1922 AD 492 at 507; *Schultz v Butt* 1986 (3) SA 667 (A) at 678F-H; *Pexmart CC and Others v H Mocke Construction (Pty) Ltd and Another* [2018] ZASCA 175; 2019 (3) SA 117 (SCA) para 62.

in loss’.⁴ More particularly, the appellant alleged that the respondent had infringed its goodwill (its claim to considerable goodwill in the OSTEOTOME brand was not denied) by the publication of disparaging, untrue statements about its products. Van Heerden and Neethling state the principle this way:

‘The direct infringement of the goodwill of a competitor’s undertaking by the publication of disparaging, untrue statements about his business, goods or services, is undoubtedly unlawful. Such a direct attack on a rival is clearly in conflict with the competition principle (and therefore also *contra bonos mores*): there is no question of performance (merit) competition because the perpetrator is deceiving the public as to the merit of his rival’s performance. Although it is possible that justification for this type of conduct may exist, such justification will probably be highly exceptional.

Forms of infringement by untrue disparagement are legion and may be of the most divergent kind. Usually the misrepresentation is directed at the undertaking of a rival as a whole . . . or the performance which the undertaking renders (such as a statement that its products are of an inferior quality or have a harmful effect on consumers).’⁵

[11] In *Geary*,⁶ Steyn CJ outlined the requirements for a claim based on injurious falsehood (untrue disparagement), ie an intentional wrongful act under the Aquilian action, as follows:

‘What [the plaintiff] has to allege and prove, therefore, is that the defendant has, by word or conduct or both, made a false representation, that it knew the representation to be false, that the plaintiff has lost or will lose customers, that the false representation is the cause thereof, and that the defendant intended to cause the plaintiff that loss by the false representation.’⁷

The requirement of fault in the context of an interdict based on an injurious falsehood is dealt with below.

⁴ *Matthews v Young* fn 3 at 507.

⁵ H J O van Heerden and J Neethling *Unlawful Competition* 2 ed at 267 para 1.1, footnotes omitted.

⁶ *Geary* fn 3 at 441C-D. INSERT FULL REFERENCE

⁷ Van Heerden and J Neethling op cit fn 5 at 272 para 1.2.2.

[12] That brings me to the advertisements, both of which were shown to us in court. The initial advertisement depicts a couple, walking down the aisle of a retail store that sells joint care products. The advertisement states that it is ‘for the millions suffering from stiff and painful joints who should not be taking glucosamine and chondroitin’ if they suffer from high blood pressure, diabetes, asthma, shellfish allergy, or if they are on blood thinners. The couple stops at a shelf on which OSTEOEZE products (blurred but identifiable by its distinctive packaging) are displayed and the words, ‘WARNING: Glucosamine & Chondroitin HEALTH RISK’ appear prominently on the screen, while they look at each other with concern.

[13] Next, the words, ‘Glucosamine Chondroitin HEALTH RISK!’ appear on the screen in large letters in a circular device and red stop signs containing the words, ‘high blood pressure’, ‘diabetes’, ‘asthma’, ‘shellfish allergy’ and ‘taking blood thinners’ appear around the circular device. The lady in the advertisement takes a box from the shelf. As she removes the package insert, the distinctive OSTEOEZE GOLD packaging appears at the top of the box, and viewers are warned to read what is clearly the OSTEOEZE GOLD package insert before taking products containing glucosamine and chondroitin, as these ingredients ‘can affect your blood pressure or diabetes and trigger asthmatic or allergic reactions’. The words, ‘blood pressure’, ‘asthma’ and ‘diabetes’ are then superimposed in large font on an enlarged package insert under the heading, ‘WARNING AND SPECIAL PRECAUTIONS’. The word ‘allergic’, also in large font, is superimposed on the package insert under the heading ‘CONTRA-INDICATIONS’.

[14] The lady takes a box of PIASCLEDINE from a shelf, hands it to the man who then holds up the box prominently on the screen. The advertisement states that fortunately PIASCLEDINE is the only clinically proven osteoarthritis

treatment that reduces pain, improves movement, slows disease progression, lessens the need for harmful anti-inflammatories and is safe to use with other medicines, whilst the words ‘CLINICALLY PROVEN’, ‘Reduces pain’, ‘Improves movement’, ‘Slows disease progression’, ‘Fewer harmful anti-inflammatories’ and ‘No known drug interactions’ appear as positive bullet points on the screen. It is also stated that PIASCLEDINE contains ‘[n]o glucosamine, no chondroitin’; and that it is the ‘No 1 prescribed osteoarthritis treatment by doctors’. A large logo appears on the screen stating ‘CLINICALLY PROVEN’, ‘No glucosamine’ and ‘No chondroitin’. A large bold block also appears containing the words, ‘No 1 Prescribed treatment by SA doctors’.

[15] The altered advertisement is the same, save that the pictures showing the OSTEOEZE products are less distinct due to a blurring effect. Both advertisements are 45 seconds long and their wording is exactly the same, read out by the same narrator. The same couple can be seen walking down the aisle in the same store that stocks joint care products. The changes in the altered advertisement are best illustrated by comparing the relevant visual components thereof to those in the initial advertisement.

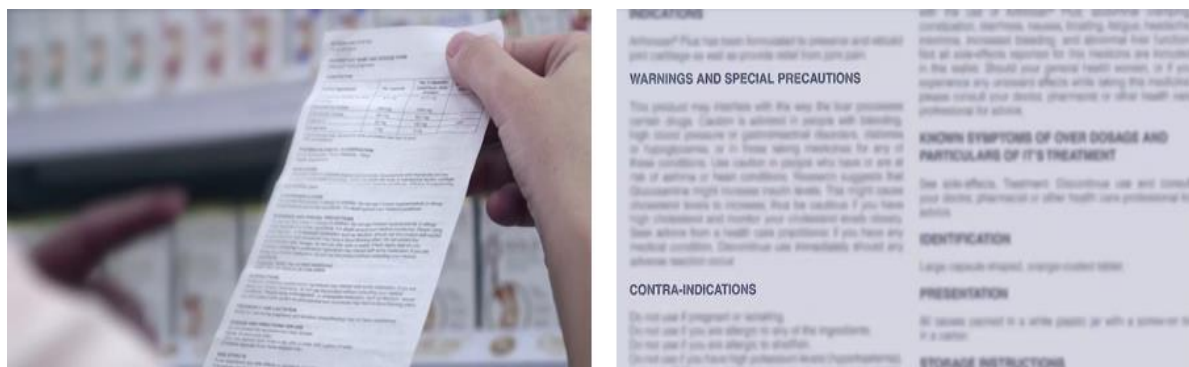
[16] The previously visible OSTEOEZE GOLD products on the shelf have been further blurred but are still there. The outline of the OSTEOEZE GOLD box can still be seen. The words ‘WARNING: Glucosamine & Chondroitin HEALTH RISK’ were simply moved to the bottom of the screen, to hide the appellant’s OSTEOEZE GOLD products with their distinctive packaging.



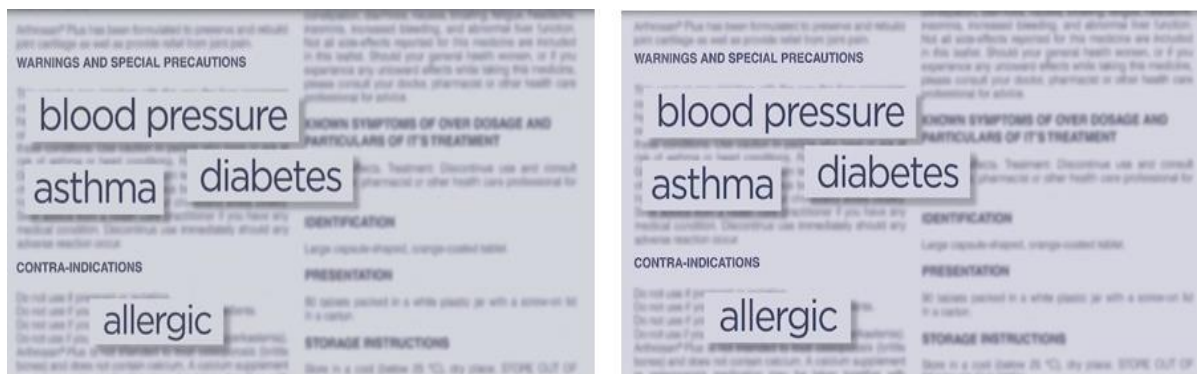
[17] No changes were made to the warning that glucosamine and chondroitin constitute a health risk in the case of the medical conditions highlighted in red stop signs:



[18] The initial advertisement showed the OSTEOEZE GOLD package insert which, the papers show, contains the name OSTEOEZE GOLD even though it is indistinct in the advertisement. The altered advertisement appears to be an amalgam of the OSTEOEZE package insert and that of another competitor in the joint care supplement market.



[19] There was no change to the package insert used in both advertisements, with its focus on blood pressure, diabetes and asthma under the heading: ‘WARNING AND SPECIAL PRECAUTIONS’, and ‘allergic’ under the heading ‘CONTRA-INDICATIONS’.



[20] Counsel for the respondent however submitted that the claim that the altered advertisement was an infringement of the appellant's common law rights, and that the OSTEEOZE products were still in the altered advertisement in blurred outline, was conjecture or 'an assumption drawn from watching the original and altered advertisements side-by-side and frame-by-frame'; and that the altered advertisement contained no reference to the appellant's product.

[21] But that is not so. The two advertisements are the same, save for the blurring of the appellant's OSTEEOZE products and the removal of the OSTEEOZE GOLD package insert; and cannot be considered in isolation. The initial advertisement, described above, plainly referred to the appellant's product. The words, 'WARNING' and 'HEALTH RISK', were directly attributed to glucosamine and chondroitin. The thrust of the advertisement was that these ingredients had a harmful effect on persons suffering from high blood pressure, diabetes or asthma, and should not be taken by them. This, as is shown below, was untrue. The respondent's aim was to influence members of the public not to buy OSTEEOZE GOLD and instead, to buy PIASCLEDINE which contains no glucosamine and no chondroitin. The altered advertisement also continues to warn against the health risks linked to glucosamine and chondroitin.

[22] The respondent succeeded in this aim. The evidence presented in the court below shows that a consumer suffering from high blood pressure who had been taking OSTEEOZE GOLD for three years, after seeing the initial advertisement,

expressed concern about the warning in the advertisement as to the potential side effects of OSTEOEZE, and considered switching to PIASCLEDINE. Another consumer who had been using OSTEOEZE GOLD for some time, returned it to a pharmacy because he was distressed about the claims made in the initial advertisement about its alleged harmful effects.⁸ On the facts, the inference is inescapable that the respondent withdrew the initial advertisement because it appreciated that it had engaged in unlawful competition. Its claim that it withdrew the advertisement ‘without admission of wrongdoing’ rings hollow.

[23] As already stated, the altered advertisement was exactly the same as the initial one, except for the further blurring of the appellant’s products and removing the picture showing its package insert. The aims of the altered advertisement were the same as the initial one, which had laid the basis for the attack on the appellant’s product: to show that glucosamine and chondroitin have harmful effects, thereby injuring the appellant’s brand and its business in the eyes of consumers, and diverting them to the respondent’s product. Applying a common sense approach to the matter, it is extremely unlikely that reasonable viewers would have noticed the difference between the two advertisements. It is more probable that they would associate both advertisements with the appellant’s product.

[24] Apart from this, the initial advertisement was used as marketing tool in the field of healthcare products, and was shown in pharmacies and to other medical professionals who would obviously have known that the initial advertisement referred only to the appellant’s product, which contains glucosamine and chondroitin. It is highly likely that the altered advertisement has been and will

⁸ The respondent alleged that these complaints were hearsay. That is not correct. The appellant’s representative stated in an affidavit that she personally had to manage the complaints of a consumer of OSTEOEZE GOLD resulting from the broadcast of the initial advertisement. This was not gainsaid in the answering affidavit.

continue to be used as a marketing tool. It is inevitable that pharmacies and health professionals would also associate the altered advertisement with the initial one. In short, both advertisements were directed at diluting the appellant's brand and increasing the respondent's market share in joint care products at the appellant's expense.

[25] The next question is whether, as the appellant contended, the respondent's claim made in the initial and altered advertisements that persons suffering from high blood pressure, diabetes and asthma 'should not be taking glucosamine and chondroitin', emphasised by the use of the words, 'WARNING' and 'HEALTH RISK', is false, and unsupported by acceptable medical evidence.

[26] The appellant presented expert evidence by Dr Jeané Visser, who conducted a scientific review in the form of a clinical expert report, as to whether glucosamine and chondroitin were contra-indicated and unsafe for use in special populations, including consumers diagnosed with hypertension, diabetes and asthma. Dr Visser also did a thorough review of all possible contra-indications, precautionary use and warnings that needed to be communicated to the consumer; and completed an additional literature review to confirm that the relevant population groups (with hypertension, diabetes or asthma) were not at risk when using products containing glucosamine and chondroitin.

[27] Dr Visser concluded that the respondent's claim in the initial advertisement concerning the use of glucosamine and chondroitin were incorrect, unsubstantiated and without any medical foundation. She found that there were no convincing arguments to link unexpected adverse reactions with either glucosamine or chondroitin in patients suffering from hypertension, diabetes or asthma.

[28] Prof Anne Grobler, who holds a Ph.D degree in Pharmaceutics and a M.Sc degree in Medical Biochemistry, and whose scientific career spans some 27 years, reviewed Dr Visser's scientific and clinical reports on the contra-indications for the appellant's OSTEOEZE range, with glucosamine and chondroitin as its main active ingredients. Apart from possible contra-indications of the OSTEOEZE ingredients, Prof Grobler also reviewed the literature on the safety of glucosamine and chondroitin in select population groups (persons suffering from hypertension, diabetes or asthma). She also reviewed the available literature concerning safety and risk assessment data in respect of the OSTEOEZE ingredients. The objective of her review was threefold: to verify the data in the scientific and clinical reports presented to her by the appellant as to the contra-indications of the OSTEOEZE range in select population groups; to expand the search to include available literature to safety and risk assessment data of both glucosamine and chondroitin; and to express an opinion as to whether there were sufficient grounds for concern about the safety of glucosamine and chondroitin in the OSTEOEZE range of products.

[29] Prof Grobler came to the following conclusions. There were no convincing arguments to substantiate a link between either glucosamine and chondroitin, and contra-indications in consumers suffering from asthma, diabetes or hypertension, and no causal relationship was proved. No temporal relationship between the administration of glucosamine and chondroitin and their side effects could be shown. No convincing, reasonable causal relationship could be demonstrated 'between either of the active ingredients or the placebos, concurrent disease or circumstance and adverse events'.

[30] The high watermark of the respondent's case that glucosamine and chondroitin were a health risk to persons with high blood pressure, diabetes and asthma, was a statement by Dr Ilse van Heerden, an expert apparently consulted

by it – not made under oath or affirmation – that ‘[b]ased on scientific literature presented in this document merit exist[s] for the claim on safety of glucosamine and/or chondroitin products’. Once again, it is necessary to say that an expert’s bald statement of her opinion is not sufficient. As Wessels JA said in *Coopers*,⁹ ‘[p]roper evaluation of the opinion can only be undertaken if a process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert’. In this respect Dr Van Heerden’s report was lacking.

[31] Further, Dr Van Heerden did not take issue with the findings or the opinions of the appellant’s experts, or the reasons for their opinions. And as pointed out by Dr Visser in her supplementary affidavit filed in reply, the studies referred to in Dr Van Heerden’s report were aimed at investigating a possible link between diabetes and arteriosclerosis – not on the effects of glucosamine supplementation on blood glucose levels, or diabetes. In addition, the single case study (referred to by both Dr Visser and Dr Van Heerden) suggesting a possible link between the OSTEOEZE ingredients and the aggravation of asthma symptoms, was inconclusive (as other variables could have resulted in this reaction) and without medical foundation. Dr Van Heerden proffered no acceptable medical evidence for her opinion that glucosamine posed a risk to patients with high blood pressure, and she said nothing about the respondent’s claim that PIASCLEDINE was ‘the only clinically proven osteoarthritis treatment’.

[32] Aside from failing to produce any countervailing medical evidence, the statement in the answering affidavit that glucosamine and chondroitin could

⁹ *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft Für Schädlingsbekämpfung MBH* 1976 (3) SA 352 (A) at 371-372; *Michael and Another v Linksfield Park Clinic (Pty) Ltd and Another* [2002] 1 ALL SA 384 para 34.

affect blood pressure, diabetes and asthma, was ‘true and capable of being substantiated’, was insupportable on the facts. In this regard the respondent referred to the package inserts of products of other entities (not before the court) that marketed healthcare products containing glucosamine and chondroitin, which were irrelevant, and did not constitute evidence of the respondent’s claims that glucosamine and chondroitin were a health risk. It also referred to the OSTEOEZE GOLD package insert which stated that the product should not be used by persons taking chronic medication without consulting a medical practitioner, and suggested, remarkably, that ‘[p]eople with high blood pressure, diabetes and asthma may be included within the bracket of people taking chronic medication’. The respondent’s claim that its statements in the initial advertisement concerning glucosamine and chondroitin ‘are substantially similar to what is written in the OSTEOEZE package insert’, is absurd. And its answer that those statements were made merely to alert consumers, ‘including vulnerable, elderly patients – to the possible dangers associated with the use of the [OSTEOEZE] ingredients’, is risible.

[33] The founding affidavit stated that the purpose of the application was to obtain an urgent interim interdict, pending the outcome of an action to be instituted, as the false statements and warnings made in respect of the OSTEOEZE ingredients had caused substantial damage to the appellant’s reputation in the OSTEOEZE brand. The cases make it clear that fault is not a requirement for an interdict based on injurious falsehood: it is sufficient if the representation is false.¹⁰

[34] The requirements for the grant of an interim interdict as set out above, have been satisfied. The appellant has already suffered harm in that both

¹⁰ *Elida Gibbs (Pty) Ltd v Colgate Palmolive (Pty) Ltd* (1) 1988 (2) SA 350 (W) at 353F; *Aetiology Today CC t/a Somerset Schools v Van Aswegen and Another* 1992 (1) SA 807 (W) at 820I.

advertisements, containing false, misleading and disparaging remarks concerning its product, have already been broadcast, and the flighting of the altered advertisement is likely to continue. The envisaged claim for damages is likely to take some time before it is finalised. The balance of convenience favours the appellant. An interim interdict will not hinder the respondent in the pursuit of its business interests. By contrast, the appellant will suffer irreparable harm: the *raison d'être* of the altered advertisement is to disparage its OSTEOEZE brand which will cause it reputational and financial damage. Prompt relief against competition of this sort, in this case is justified. It follows that the appellant has no other adequate remedy.

[35] The appellant has asked that the respondent be directed to pay the costs of the high court proceedings on the punitive attorney and client scale. No such order was sought in respect of the costs of this appeal. In support of a punitive costs order in the court below, counsel for the appellant relied on the respondent's delay in halting the further broadcast of the initial advertisement and its failure to submit the alterations thereto for scrutiny by the appellant. There was some explanation provided for the delay in halting the further broadcast of the initial advertisement that cannot altogether be discounted. The respondent's belief in the lawfulness of the altered advertisement was misplaced. However, in my view, in all the circumstances a punitive costs order is not justified.

[36] For these reasons, the following order is issued:

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order of the high court is set aside and replaced with the following:
 - '2.1 Interdicting and restraining the respondent from utilising or causing to be flighted the PIASCLEDINE advertisement described in paragraphs 2.10 to 2.12 of the applicant's replying affidavit as, "*the amended advertisement*" or any part thereof, and/or any colourable imitation thereof, in any manner;

2.2 interdicting and restraining the respondent from competing unlawfully with the applicant by, directly or indirectly, making disparaging and false statements regarding the applicant's OSTEOEZE products and their ingredients, glucosamine and chondroitin;

2.3 directing that the orders referred to in paragraph 2.1 and 2.2 above operate as interim interdicts, pending the outcome of an action to be instituted by the applicant against the respondent, within 21 days of the date of this order, for interdictory relief and damages based on unlawful competition; and

2.4 directing the respondent to pay the applicant's costs, such costs to include the costs consequent upon the employment of two counsel.'

A Schippers

Judge of Appeal

APPEARANCES

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