

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: A 66/2016

In the matter between:

**SOUTHERN SUN AFRICA**  
**SOUTHERN SUN HOTEL INTERESTS (PTY) LTD**

**FIRST APPLICANT**  
**SECOND APPLICANT**

and

**SUN SQUARE HOTEL (PTY) LTD**  
**THE REGISTRAR OF COMPANIES**

**FIRST RESPONDENT**  
**SECOND RESPONDENT**

**Neutral citation:** *Southern Sun Africa v Sun Square Hotel (Pty) Ltd* (A 66/2016)  
[2018] NAHCMD 105 (23 April 2018)

**Coram:** B USIKU J  
**Heard:** 6 July 2017  
**Delivered:** 15 March 2018  
**Reasons:** 23 April 2018

**Flynote:** Practice – Application and motions – Passing-off – Goodwill not existing only at place where business is located.

Intellectual property – Copyright – Infringement of – Reproduction of a trade-logo infringing copyright.

**Summary:** The First Applicant, a Mauritian company, and a registered proprietor of SUN SQUARE logo trademark in South Africa, seeks relief against the First Respondent by way of interdict on the basis of the common law delict of passing-off. The Second Applicant, a South African company and an owner of the copyright in original artistic works in the 'SUN SQUARE' logo, registered in South Africa, seeks relief against the First Respondent by way of copyright infringement, damages and royalties. The First Respondent opposes the application. The court granted relief in favour of the Applicants.

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### ORDER

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1. The First Respondent is hereby interdicted and restrained from using the SUN SQUARE logo trade mark, or any other name or mark that is confusingly and/or deceptively similar to the First Applicant's SUN SQUARE logo trade mark.
2. The First Respondent is hereby interdicted and restrained from reproducing and/or adapting Second Applicant's original copyright works.
3. The First Respondent is ordered to deliver-up to the Second Applicant, any goods bearing reproductions or adaptations of the Second Applicant's copyright works i.e. infringing copies, including but not limited to all signage, stationery, staff uniforms, guest-amenities and marketing and advertising materials, which are in possession of the First Respondent or under its control.
4. The Second Applicant is entitled to reasonable royalties from the First Respondent which would have been payable to the Second Applicant under the circumstances by a licensee, as envisaged by s 30(2) of the Copyright and Neighbouring Rights Protection Act No.6 of 1994 ("the Copyright Act").
5. Either the Second Applicant or the First Respondent may approach the above Honourable court for directions in the event that the parties are unable to agree on the procedure to be adopted for the calculation of such reasonable royalties.

6. The Second Applicant is entitled to additional damages, as contemplated in s 30(6) of the Copyright Act.
7. Either the Second Applicant or the First Respondent may approach the above Honourable Court for directions in the event that the parties are unable to agree on the procedure to be adopted for the calculation of such additional damages.
8. The First Respondent is ordered to pay costs of suit for the First Applicant and for the Second Applicant, such costs to include costs of one instructing and two instructed counsel.

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## REASONS

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B USIKU J:

### Introduction

[1] After hearing arguments on the 06 July 2017, I issued an order on 15 March 2018, in the following terms:

1. The First Respondent is hereby interdicted and restrained from using the SUN SQUARE logo trade mark, or any other name or mark that is confusingly and/or deceptively similar to the First Applicant's SUN SQUARE logo trade mark.
2. The First Respondent is hereby interdicted and restrained from reproducing and/or adapting Second Applicant's original copyright works.
3. The First Respondent is ordered to deliver-up to the Second Applicant, any goods bearing reproductions or adaptations of the Second Applicant's copyright works i.e. infringing copies, including but not limited to all signage, stationery, staff uniforms, guest-amenities and marketing and advertising materials, which are in possession of the First Respondent or under its control.
4. The Second Applicant is entitled to reasonable royalties from the First Respondent which would have been payable to the Second Applicant under the circumstances by

a licensee, as envisaged by s 30(2) of the Copyright and Neighbouring Rights Protection Act No.6 of 1994 ("the Copyright Act").

5. Either the Second Applicant or the First Respondent may approach the above Honourable court for directions in the event that the parties are unable to agree on the procedure to be adopted for the calculation of such reasonable royalties.
6. The Second Applicant is entitled to additional damages, as contemplated in s 30(6) of the Copyright Act.
7. Either the Second Applicant or the First Respondent may approach the above Honourable Court for directions in the event that the parties are unable to agree on the procedure to be adopted for the calculation of such additional damages.
8. The First Respondent is ordered to pay costs of suit for the First Applicant and for the Second Applicant, such costs to include costs of one instructing and two instructed counsel.
9. I shall release reasons for the above order on the **19 April 2018 at 09:00.**

[2] What follows hereunder are the reasons for the above order.

[3] The First Applicant is SOUTHERN SUN AFRICA, a Mauritian company and is the registered proprietor, in South Africa since 2005, of the trade-mark 'SUN SQUARE' and device. The First Applicant provides hotel and related services in South Africa.

[4] The Second Applicant is SOUTHERN SUN HOTEL INTERESTS (PTY) Ltd, a South African company, and owns the copyright in original artistic works in the 'SUN SQUARE' logo, (consisting in the 'first logo' created in 2005 and the 'derivative logo' created in 2014). The mark/logo in question consists of the words 'SUN SQUARE' and three half suns and device as appears hereunder:



[5] The First Applicant and the Second Applicant belong to the Tsogo Sun group of companies operational since 1969 which provides hotel, gaming and related services in Africa. Unless the context otherwise provides, the two applicants will be referred to as the 'Applicants'.

[6] The First Respondent is SUN SQUARE HOTEL (PTY) Ltd, a Namibian company, which provides hotel and related services in Oshikango, Namibia.

[7] The Second Respondent is the REGISTRAR OF COMPANIES, cited in his official capacity only, and no order is sought against the Second Respondent save an order for costs in the event that he opposes the application. The Second Respondent does not oppose the application. I shall therefore refer to the First Respondent as the 'Respondent', save where the context otherwise indicates.

[8] The Applicants first became aware of the Respondent's existence in July 2015 when the Applicants received photographs of the Respondent's hotel signage, facilities and guest amenities. The Respondent provides similar services to that of the First Applicant and uses a logo identical to the logo referred to under paragraph 4 above.

[9] Approaches by the Applicants to the Respondent on or about the 13 August 2015, requesting the Respondent to change its name and to desist from using the First Applicant's SUN SQUARE logo trade-mark and to cease reproducing and/or adapting the Second Applicant's original copyright works, proved fruitless. On the 3<sup>rd</sup> March 2016, the Applicants launched the present application, seeking an order in the following terms:

- '1. An interdict restraining the First Respondent from using the SUN SQUARE logo trade mark, or any other name or mark that is confusingly and/or deceptively similar to the First Applicant's SUN SQUARE logo trade mark.
2. An interdict restraining the First Respondent from reproducing and/or adapting the Second Applicant's original copyright works.
3. The delivery-up of any goods bearing reproduction or adaptation of the Second Applicant's copyright works i.e infringing copies, including but not limited to signage, stationary, staff uniforms, guest amenities and marketing and advertising materials.

4. Payment of reasonable royalties which would have been payable to the Second Applicant under the circumstances by a licensee.
5. Payment additional damages.
6. Such further and/or alternative relief as this Honourable Court may deem fit to grant.'

[10] The First Applicant's claim to interdict the Respondent from using the SUN SQUARE logo trade-mark is based upon the averment that the Respondent's conduct amounts to wrongful passing-off by the Respondent that its business or services or both, are connected with that of the First Applicant. Whereas the Second Applicant's claim to interdict the Respondent from reproducing and/or adapting the SUN SQUARE logo is based on the averment that the Respondent's conduct constitutes infringement of the Second Applicant's original copyright works in terms of the s 29(1) of the Copyright and Neighbouring Rights Protection Act 6 of 1994 ('the Copyright Act').

#### The version of the First Applicant

[11] The First Applicant relates that it conducts business in the field of hotel and related services using the SUN SQUARE logo trade-mark. The SUN SQUARE logo trade-mark has been used extensively by the Tsogo Sun group under the licence from the First Applicant for many years in relation to hotel services and in relation to the provision of related services such as catering, banqueting, conference services, the provision of temporary accommodation, entertainment, leisure, fitness services and the like. The SUN SQUARE brand was conceptualized in year 2004 when a need was identified in South Africa and Dubai markets (markets with frequent corporate travellers) for a hotel room that was 20m<sup>2</sup> in size with a bathroom included in the room.

[12] There are currently three (3) SUN SQUARE hotels located in Durban: opened on 15 December 2006; Johannesburg: opened on 13 April 2007, and Cape Town: opened on 10 September 2014. The SUN SQUARE hotels are all situated in popular tourist areas and are frequented by tourists and business travelers from all over the world, including Namibia.

[13] The services under the First Applicant's SUN SQUARE logo trade-mark have been advertised extensively through the print and media advertisements. The First Applicant furnished proof of samples of advertisements and promotional materials for the SUN SQUARE services. The First Applicant contends that the use of the SUN SQUARE logo trade-mark in South Africa, particularly through advertising, is relevant in Namibia because South Africa and Namibia are neighbouring States and because of the free-trade and passage that exist between them. Both countries are parties to the Southern Africa Customs Union (SACU), which facilitates free-trade between member states. The First Applicant further argues that all mainstream magazines and newspapers in which the First Applicant's SUN SQUARE logo trade-mark appears are widely available in Namibia.

[14] The First Applicant tendered to the Respondent inspection of the guest-list, and furnished a copy of the guest list of the Namibian visitors to the SUN SQUARE hotels in South Africa during the period of January 2009 to December 2015 and January 2016 to May 2016, amounting to more than 1700 rooms-rights sold with a related revenue of more than R2 000 000.

[15] The First Applicant further relates that the gross revenue generated from services rendered under the First Applicant's SUN SQUARE logo trade-mark over the period from 2009 to 2016 amounts to a total of R810 475 224.28.

[16] The First Applicant argues that its SUN SQUARE logo trade-mark has enjoyed extensive use in South Africa since year 2006 and has acquired a protectable reputation. The common law rights of the First Applicant extend to Namibia through the use of its services by Namibian visitors and its advertising and marketing efforts as evidenced above.

[17] As far as the Respondent is concerned, the First Applicant contends that the Respondent has not explained how it adopted 'its' logo trade-mark and trading style. The Respondent was incorporated as a close corporation in May 2011 and was converted into a private company in March 2015. The Respondent provides hotel and related services and had adopted SUN SQUARE device trade mark of the First Applicant.

### The version of the Second Applicant

[18] The Second Applicant avers that it owns the copyright in original artistic works in the SUN SQUARE logo, and is entitled to the protection afforded in terms of s 3 of the Copyright Act<sup>1</sup> read with the provisions of the Berne Convention for the Protection of Literary and Artistic Works of 1886 ('the Berne Convention'). Both South Africa and Namibia are parties to the Berne Convention and therefore the Second Applicant's copyright in the copyright works subsists and is enforceable in Namibia and South Africa.

[19] The Second Applicant contends that, in terms of s 63 (1) of the Copyright Act<sup>2</sup>, the relevant Minister has by notice in the Gazette<sup>3</sup> extended the protection of the copyright to persons who are citizens, residents or domiciled in South Africa. The effect of the foregoing being that the copyright of the Second Applicant enjoys the same copyright protection in Namibia as Namibian citizens or residents do. The Respondent has infringed the copyright of the Second Applicant in its artistic works by reproducing the SUN SQUARE logo in the minutest detail and is therefore entitled to the relief it seeks.

### The version of the Respondent

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<sup>1</sup> The relevant part of s 3 reads as follows:

**' 3 Copyright by virtue of nationality, domicile or residence**

(1) Subject to subsection (2), copyright shall subsist in every work eligible for copyright of which the author or, in the case of a work of joint authorship, one of the authors, is, at the time the work or a substantial part thereof is made, a qualified person and in respect of which copyright is not conferred by s 5.'

<sup>2</sup> Section 63(1) provides as follows:

'63 Application of Act to other countries

(1) The Minister may by notice in the Gazette provide that any provision of this Act specified in the notice shall in the case of a country so specified apply-

- (a) in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions, first published in that country as it applies in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recording and published editions first published in Namibia;
- (b) in relation to persons who at a material time are citizens or subjects of that country as it applies in relation to persons who at such a time are Namibian citizens;
- (c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to person who at such a time are domiciled or resident in Namibia;
- (d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of Namibia;'

<sup>3</sup> Government Gazette No. 2562 dated the 27 June 2001: Government Notice No. 127 of 2001: s 2 thereof.



[20] The Respondent raised five points in limine, namely:

- (a) the two Applicants are foreign companies who do not conduct business in Namibia. The Applicants seek to interdict the Respondent from using its registered name. The Applicants have not sought to impugn the registration of the Respondent with the Registrar of Companies;
- (b) the First Applicant has not registered any trade mark in Namibia as contemplated in terms of Part VI and VII of the Trade Marks in South West Africa Act<sup>4</sup> ('the Trade Marks Act') and cannot in terms of ss 43-44 of the Trade Marks Act sue for an infringement of the trade mark in question;
- (c) viewing that the Applicants have not impugned the registration and the approval of the name of the Respondent by the Registrar of the Companies, the Respondent has and retains, the right to use its registered name: SUN SQUARE HOTEL (Pty) Limited;
- (d) intellectual property-rights, including copyright, are intangible immovables which the local courts do not have jurisdiction in respect of foreign copyright issues;
- (e) the court does not have jurisdiction in terms of s 35 (2)(a)(ii) and (iii) and (b) of the Copyright Act<sup>5</sup>, as Second Applicant ought to have brought its action in a Tribunal established in terms of s 35 of the Copyright Act.

[21] The general thread of the version of the Respondent is that the Respondent disputes that the Applicants are entitled to the relief they seek.

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<sup>4</sup> Act No. 48 of 1973

<sup>5</sup> Section 35 provides as follows:

**“35 Establishment and jurisdiction of Copyright Tribunal**

(1) The Judge-President of the High Court of Namibia shall from time to time designate one or more judges or acting judges of the High Court to be the Copyright Tribunal for the purposes of this Act.

(2) Subject to this Chapter, the function of the Tribunal shall be –

(a) to determine disputes arising between –

(i) licensing bodies;

(ii) other persons from whom licences are required and persons requiring licences; or

(iii) organizations claiming to be representative of any such persons,

either upon the reference of a licence scheme to the Tribunal or upon the application of a person requiring a licence, whether in accordance with a licence scheme or in a case not covered by a licence scheme;

(b) to make such other determinations as are provided for in this Act.”

[22] The Respondent avers that the evidence by the First Applicant in respect of its advertisements is markedly insufficient and does not prove any extensive marketing in Namibia, to establish the basis that the First Applicant's trade-mark logo has obtained a protectable reputation in Namibia.

[23] In respect of the guest-list reflecting the names, arrival and departure dates, room numbers and other entries, of Namibian visitors to SUN SQUARE hotels in South Africa, the Respondent contends that such allegations are hearsay and inadmissible as the deponent to the relevant affidavit bears no personal knowledge of the truthfulness thereof. The deponent relies on entries in records/registers in respect of which he is not the primary witness and was not the person who made the entries in the visitor's register to enable him to allege that a particular visitor was in fact a Namibian. To the extent that such guest-list was tendered to prove the truthfulness of the content of such list, the list amounts to hearsay evidence.

### Analysis

#### *Passing-off*

[24] The delict of passing-off was defined in *Brian Boswell Circus (Pty) Ltd and Another v Boswell-Wilkie Circus (Pty) Ltd* 1985(4) SA 466 at 478F-I as follows:

'The wrong known as passing off is constituted by a representation, express or implied, by one person that his business or merchandise, or both, are connected with those of another. . . . Where they are implied, such representation (concerning the wrongdoer's business) are usually made by the wrongdoer adopting a name for his business which resembles that of the aggrieved party's business; and the test is then whether in all the circumstances the resemblance is such that there is a reasonable likelihood that ordinary member of the public, or a substantial section thereof, may be confused or deceived into believing that the business of the alleged wrongdoer is that of the aggrieved party or is connected therewith. Whether there is such a reasonable likelihood or confusion is a question of fact to be determined in the light of the particular circumstances of the case.'

[25] The above definition was approved and applied in our jurisdiction in *Mega Power Centre cc t/a Talisman Plant and Tool Hire and others*: Case No. SA 46/2013 and in *Gonschorek and Others v Asmus & Another* 2008 (1) NR 262 SC at 279.

[26] In a passing-off claim, an applicant must establish that the name, mark or get-up adopted for its goods or services, has by user become distinctive of its goods or services, irrespective of whether the actual identity of the applicant as producer of good/services is known to the public or not<sup>6</sup>. An applicant is normally required to establish two important factors, namely:

- (a) whether the Respondent is engaged in the same/similar field of business activity as the Applicant, and
- (b) whether the Applicant's business-name has acquired a reputation i.e has become distinctive of, or in the minds of the public is associated with, the business activity carried on by the Applicant. Though engagement in the same or similar field is not a pre-requisite to success, the existence of this factor would tend to enhance the likelihood of confusion or deception, as far as the general public is concerned<sup>7</sup>.

[27] In the present matter, the First Applicant furnished evidence about the advertising, marketing and sales figures of its services as facts from which conclusion may be drawn that it has established the requisite reputation. The First Applicant contends that the extent of the Applicant's use of the trade-mark 'SUN SQUARE' and logo is not in dispute. It further contends that the allegations of spill-over advertising and because of the close proximity of Namibia and South Africa, Namibians would have been exposed to the advertisements of the Applicant.

[28] The Respondent, in opposing the First Applicant's application, has been content with making bare denials of the allegations of reputation by the First Applicant and has not sought to put forth evidence to substantiate and/or support such denials.

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<sup>6</sup> *Hollywood Curl (Pty) Ltd and Another v Twins Products (Pty) Ltd* (1) 1989(1) SA 236 at 249 D-E.

<sup>7</sup> *Brian Boswell Circus (Pty) Ltd and Another v Boswell-Wilkie Circus (Pty) Ltd* at 479 A-C.

[29] Having regard to all the evidence and the inference to be drawn therefrom and the absence of any real countervailing argument, I am satisfied that the First Respondent has established a reputation in Namibia in the name 'SUN SQUARE' and its logo.

[30] On the evidence, the use by the First Applicant of the name or words 'SUN SQUARE' and its logo was first on the market, and is unique, and has been extensively advertised. The same cannot be said of the use of the 'SUN SQUARE' HOTEL and the logo, by the Respondent. Furthermore, the Respondent has not offered any explanation as to how it adopted the name SUN SQUARE and the trade-logo.

[31] Having weighed all the evidence I am satisfied that here is a real likelihood of deception or confusion of the kind complained of by the First Applicant, and that if the Respondent is allowed to continue to conduct its business under the name 'SUN SQUARE' and/or the logo in question, it will be trading on and infringing the First Respondent's goodwill.

### Copyright infringement

[32] In the present matter the Second Applicant contends that the Respondent has, without a license, reproduced its SUN SQUARE logo (i.e its artistic works). In terms of s 2(1) of the Copyright Act, artistic works are eligible for copyright if they are original. Copyright is conferred on an author of works which is eligible for copyright<sup>8</sup>. The work is considered to be original if it has not been copied from an existing source and if its production required substantial (or not trivial) degree of skill, judgment or labour<sup>9</sup>.

[33] Copyright is infringed when a person who without a licence from the owner of the copyright does or causes any other person to do, in Namibia any act which the owner has exclusive right to do, or to so authorize<sup>10</sup>.

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<sup>8</sup> Section 3 of the Copyright Act.

<sup>9</sup> *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd and Others* 2006 (4) SA 458 (SCA) at p. 473 A-B.

<sup>10</sup> Section 29 (1) of the Copyright Act.

[34] There is no real dispute in the present case that Second Applicant is the author of the works in question. It is also apparent from the evidence that the logo used by the Respondent is a replica of the logo which the Second Applicant claims copyright in. From the evidence, it is clear that the Respondent has reproduced the entire, or almost the entire, works of the Second Respondent, and has thereby infringed the Second Respondent's copyright in the works in question.

[35] Having found that the Respondent has infringed the Second Respondent's copyright, the conclusion is clear that any goods bearing reproduction or adaptation of the Second Applicant's copyright works, which is in the possession or under the control of the Respondent, are counterfeit goods, and should be delivered-up.

#### Respondent's point *in limine* and other points

[36] As pointed out before, the Respondent contends that the Applicants are foreign companies who do not conduct business in Namibia, and have not registered any trade mark in Namibia. This argument has no substance in that the First Applicant relies on the common law delict of passing-off for the relief it seeks.

[37] The Respondent further argues that local courts have no jurisdiction in respect of foreign copyright matters. As authority for this proposition the Respondent relies on *Gallo Africa Ltd and Others v Sting Music (Pty) Ltd and Others* 2010 (6) SA 329. I am of the opinion that the facts in the Gallo Africa case are distinguishable from the facts in the present case. In the Gallo Africa case the Plaintiff alleged that the Defendant had infringed its copyright-works in 19 foreign countries, and sought to rely on copyright-laws of each of those foreign countries in a South African court. The court held that it does not have jurisdiction to hear the matter.

[38] In the instant case, the Applicant based the claim on the Copyright Act of Namibia, and therefore the Gallo Africa case is not applicable to the matter at hand.

[39] The Respondent, in addition, contends that this court has no jurisdiction to hear the present case, as the Second Applicant ought to have taken the matter to the Tribunal established in terms of s 35 of the Copyright Act. Having read the

provisions of s 35 referred to, I am of the opinion that such section has no bearing on the present matter.

[40] In regard to the Respondent's contention that the Respondent retains the right to use its registered name, since the Applicants have not impugned the registration of such name with the Registrar of the Companies, I am of the opinion that this argument has no substance. Impugning a registered name is not a requirement to prove a claim based on the delict of passing-off.

[41] As regards the guest-list of Namibian visitors (customers) furnished by the First Applicant, the Respondent argues that, insofar as the guest-list is given to prove the truthfulness of the allegations that the figures provided represent the number of Namibian visitors, such allegations are hearsay, as the deponent has no personal knowledge of the truthfulness thereof. The Respondent argues that the deponent simply relies on certain entries in records or registers, in respect of which he is not a primary witness.

[42] Insofar as the guest list is concerned, evidence is given by the deponent to the Applicant's Supplementary Affidavit that the guest list is submitted as evidence of the First Applicant's protectable goodwill in Namibia. In addition, Marion Hudson, deposed to a Supporting Affidavit, confirming that she extracted the guest list from the properly kept, continuous record of the Applicants, which records are under her control.

[43] The only person who is mentioned in the guest list who deposed to an affidavit is Hans-Bruno Gerdes, who confirmed that his names appear on pages 5,7,19 and 20 of the guest list, and that he confirms the correctness of the information contained in the guest list insofar as the guest list relates to him.

[44] It is difficult to contend that the probative value of the content of the guest list, especially insofar as nationality of the guests is concerned, does not depend on the credibility of persons reflected on such list. For that reason the evidence of the guest list, except insofar as it relates to Hans-Bruno Gerdes, is ruled inadmissible, on the ground that it constitutes hearsay evidence.

[45] Notwithstanding the above, there is no justification in requiring, in every case, evidence from the purchasing public, to show that the name or symbol in question is recognized as distinctive of the applicant's services or business, to prove reputation. The manner and scale of the use of the symbol in question can in itself be sufficient to warrant the conclusion that it must have become recognized by a substantial section of the relevant public as distinctive of the Applicant's services or business<sup>11</sup>.

[46] In the present case, I am satisfied that the extent of the advertisement of the SUN SQUARE name and logo, as shown by the evidence, and the manner and scale of such use, are themselves sufficient to warrant the conclusion that such name and logo must have become recognized by a substantial section of the Namibian public as distinctive of the First Applicant's services or business. Accordingly, I am satisfied that the First Applicant has established the requisite reputation in their use of the name 'SUN SQUARE' and the relevant logo.

#### Requirements of a final interdict

[47] The requirements of a final interdict are: a clear right on the part of an applicant; an injury committed or reasonably apprehended, and there being no other satisfactory remedy available to the applicant.

[48] In the foregoing paragraphs, I have found that the Respondent's use of the name 'SUN SQUARE' and/or the name 'SUN SQUARE' and logo, are likely to cause confusion. Such passing-off, results, or is calculated to result, in the improper filching of the First Applicant's trade and an improper infringement of its goodwill and may cause injury to the First Applicant's trade reputation<sup>12</sup>. It is trite law that once passing-off is established, damages are presumed<sup>13</sup>.

[49] The Second Applicant is the copyright owner in the original and artistic-works subsisting in the logo in question. The Respondent has infringed the Second Applicant's copyright.

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<sup>11</sup> *Cambridge Plan AG and Another v Moore and Others* 1987(4) SA 821(D) at p.837 B-E.

<sup>12</sup> *Brian Boswell Circus (Pty) Ltd and Another v Boswell-Wilkie Circus (Pty) Ltd* at 478 I-J.

<sup>13</sup> *Mega Power Centre cc t/a Talisman Plant and Tool Hire and others*: Case No. SA 46/2013 para [21].

[50] Interdictory relief is generally the appropriate remedy applied for in the passing-off and copyright infringement cases, the reason being that no other remedy can afford the necessary protection to an applicant who is a victim of passing-off or copyright infringement. On the basis of the foregoing, I am satisfied that the requisites of interdictory relief have been established and the Applicants are entitled to the interdictory relief they seek.

[51] For reasons foregoing, I made the order recorded in para 1 above.

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B Usiku  
Judge



## APPEARANCES

APPLICANTS: R Michau (with him D Beukes)  
Instructed by Engling, Stritter & Partners, Windhoek

FIRST RESPONDENT: S Namandje (with him M Ntinda)  
Of Sisa Namadje & Co. Inc., Windhoek