

[HOME](#)[LEGAL TOPICS](#)[PRESS OFFICE](#)[EVENTS](#)[STUDENT ZONE](#)[CAREERS](#)[ABOUT](#)

Home » Intellectual Property Law » No more fowl play? The department of agriculture takes steps to prevent the use of false or misleading descriptions in respect of animal and processed plant products

No more fowl play? The department of agriculture takes steps to prevent the use of false or misleading descriptions in respect of animal and processed plant products



Provided By **ADAMS & ADAMS**

Adams & Adams Is An Internationally Recognised Full-Service Corporate Law Firm, Based In South Africa. Our Leadership Position As One Of The Largest Intellectual Property Law Practice's In The Southern Hemisphere, And A... **MORE**

By **JANI CRONJE**

Topics Consumer Protection | Intellectual Property Law

15 Oct 2021

The [Department of Agriculture, Land Reform and Rural Development](#) (“the Department of Agriculture”) recently sent a letter to all processors, packers, importers, exporters and retailers of animal and processed plant products (“the regulated products”), which products are regulated by the [Agricultural Product Standards Act, 1990](#) (“the Agricultural Act”), confirming a change in approach in applying Section 6 of the Agricultural Act.

Section 6 of the Agricultural Act prohibits the use of false or misleading descriptions in respect of the regulated products. In this regard, “No person shall use any name, word, expression, reference, particulars or indication in any manner, either by itself or in conjunction with any other verbal or written, printed, illustrated or visual material, in connection with the sale of a product in a manner that conveys or creates or is likely to convey or create, a false or misleading impression as to the nature, substance, quality or other properties, or the class or grade, origin, or identity or manner or place of production, of that product”.

The position previously had been that the various inspectors and agencies tasked with, inter alia, enforcing Section 6 of the Agricultural Act, were instructed to ignore any trade marks used in respect of the regulated products (either registered or in the process of being registered) that were regarded as misleading. It had been agreed during a meeting between the Directorate of Food Safety and Quality Assurance and the Head of the Trade Marks Division at [CIPC](#) that the department of Trade and Industry would be responsible for the registration and administration of trade marks and the Department of Agriculture would regulate the quality and composition of agricultural products presented for sale. To my mind, this was a decision to divide and conquer, hopefully for the good of consumers.

Of course, a trade mark which had been registered or was in the process of being registered would be examined by the Registrar of Trade Marks' examiners, using the criteria for registrability as set out in the [Trade Marks Act, 1993](#) ("the Trade Marks Act").

In this regard, Section 10 of the Trade Marks Act deals solely with what would be regarded as unregistrable trade marks, which include marks "consisting exclusively of a sign or indication which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode and time of production of goods or of rendering of the services". The overlap with Section 6 of the Agricultural Act is quite clear. Section 10 of the Trade Marks Act goes even further to prevent the registration of a mark which "consists exclusively of a sign or indication which has become customary in the current language or in the bona fide and established practices of the trade".

The application of the principles set out in the Trade Marks Act should, therefore, address entirely what was envisaged in Section 6 of the Agricultural Act, i.e. that marks may not be used that would cause confusion. For the purposes of this article, I will not elaborate on geographical indicators, which have received a lot of attention recently and which are also in the process of being properly regulated.

What, however, transpired in trade after the meeting at CIPC, was that the inspectors and agencies were frequently receiving complaints about the use of misleading trade marks on the regulated products. Seemingly trade marks which would have "passed" the registrability test set out by the Trade Marks Act, were causing confusion.

Accordingly, a decision was taken to seek a legal opinion about the application of Section 6 of the Agricultural Act on trade marks (registered or pending before the Registrar) to be used in respect of the regulated products. The Department of

Agriculture was clearly uncertain as to whether Section 6 of the Agricultural Act could enable the inspectors and relevant agencies to interfere with the use of a (registered or pending) trade mark on the regulated products, where said trade mark had been (or would be) approved in terms of the Trade Marks Act. The consequences of essentially depriving a proprietor of its property or at least interfering with the use thereof, could be far reaching (a topic worthy of perhaps a separate article).

As indicated above, the purpose of both Section 6 of the Agricultural Act and section 10 of the Trade Marks Act, is to prevent consumers being confused or misled. The Trade Marks Act having application generally, on the various goods and services classified in 45 classes (including, of course, processed plant and animal products), with the Agricultural Act, having specific application as already referred to.

After picking up a Farmers Weekly for the purpose of writing this article, I quickly recognised that in the context of the regulated products, the first line of defence at the Trade Marks Office to prevent confusion, may possibly not be enough. To the writer's trade mark eye, there were numerous marks that were referred to in the publication, that should be very distinctive from a trade marks perspective. Large White and Landrace had no meaning at all to me in the context of animals, but were apparently the names of pig breeds, known for certain qualities making them superior to others. Possibly a better example is Bird's Eye, which is apparently the name of a type of chilli.

Of course, Large White and Landrace are the names of breeds and will not necessarily be used in relation to any connected animal product, but I think the point is made. It is very possible for a trained examiner at the office of the Registrar of Trade Marks, to examine and accept a trade mark, to be used in respect of the regulated products, which trade mark has a meaning which the examiner may not be aware of (and cannot reasonably be expected to know).

For the sake of brevity, the opinion the Department of Agriculture received was apparently that section 6 of the Agricultural Act was wide enough to include registered or even unregistered trade marks. Rather than divide and conquer, the approach is now two barrelled in the fight against consumer confusion, certainly as far as the regulated products are concerned.

What will be interesting to see is the influence (in respect of trade mark protection) this approach will have on proprietors of marks to be used on the regulated products. In essence, the application of section 6 to the regulated products has now reverted to

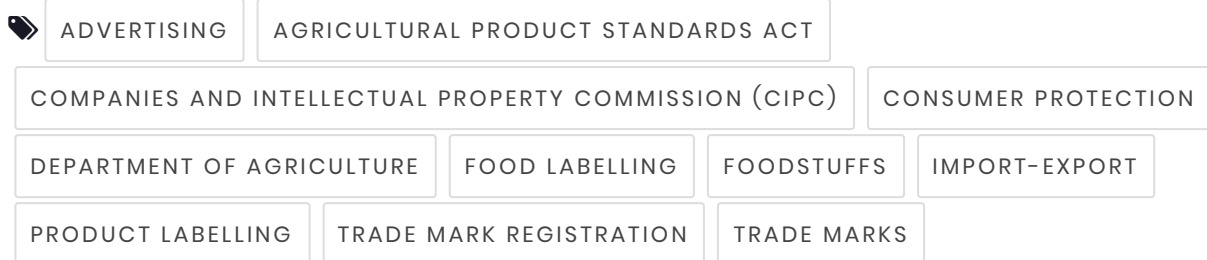
the approach previously applied before the meeting at CIPC took place. The position is, therefore, not new and proprietors would have been exposed thereto, before.

Let us see what chickens come home to roost.

See also:

- [Karoo lamb, rooibos tea, Bapsfontein...What's in a name?](#)
- [Russia ousts champagne in favour of Champanskoye](#)
- [South Africa's coffee clean-up](#)
- [Just a spoonful of sugar? – Is your honey pure?](#)

(This article is provided for informational purposes only and not for the purpose of providing legal advice. For more information on the topic, please contact the author/s or the relevant provider.)



[Jani Cronje](#)

Jani Cronjé is a partner in the firm's Trade Mark Litigation department. She specialises in trade mark oppositions and cancellations, trade mark infringement and passing-off disputes, domain name complaints, ASA... [Read more about Jani Cronje](#)

[Click here to send a legal query to Jani Cronje](#)

Share



Intellectual Property Law articles by **Adams & Adams**

COVID incorporating marks in a global pandemic – To file or not to file

Russia ousts champagne in favour of Shampanskoye

Ambushing a Lion – Is it a good idea?

What brand owners should know about preventing counterfeit goods in South Africa

Intellectual Property Law articles on GoLegal

Influencers and counterfeit goods – Are influencers inciting their followers to buy counterfeit products?

The value of certification trade marks

Building off Brexit

Copyright infringement at the Met Gala

PROVIDED BY:



BY





Jani Cronje

Jani Cronjé is a partner in the firm’s Trade Mark Litigation department. ...

SEND A LEGAL QUERY TO JANI CRONJE

EXPERTS IN INTELLECTUAL PROPERTY LAW



Adams & Adams

64 Relevant articles



Eversheds Sutherland

8 Relevant articles



KISCH IP

175 Relevant articles



Sabinet

4 Relevant articles

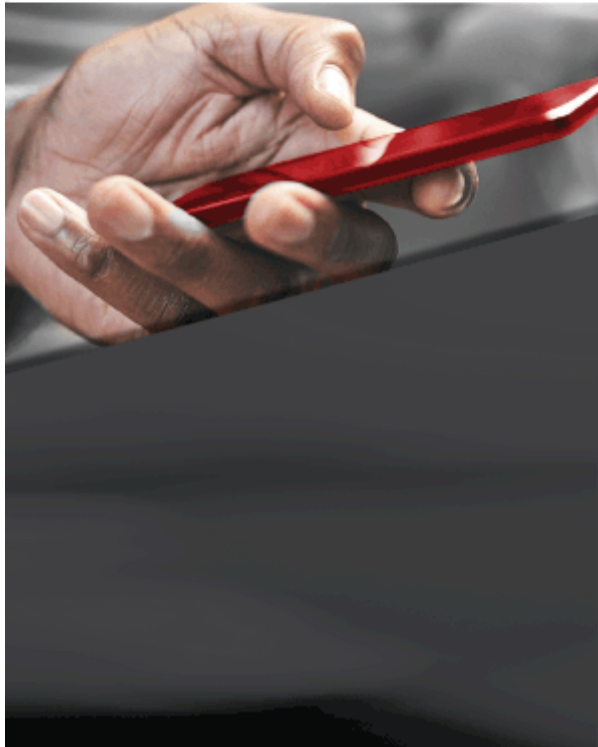


SchoemanLaw Inc

1 Relevant articles



Facilitating **access** to information



UPCOMING EVENTS

Series: Three steps to becoming a better leader (Part 3)

OCT 21 @ 2:00 PM

Unpacking accountability structures and disciplinary proceedings – Directors and employees

OCT 25 @ 11:00 AM

How to cultivate healthy client relationships

NOV 3 @ 11:00 AM

Privacy on – and offline: What your business needs to know and do!

NOV 10 @ 11:00 AM - 12:00 pm

The do's and don'ts of responsible social media usage – Both the greatest threat and asset to your business

DEC 2 @ 11:00 AM

Want the latest legal news and views in your box?

Your email address

Subscribe



GoLegal is a leading industry news and information portal for the South African legal sector, catering to attorneys, corporate counsel, legal scholars, policy makers and other corporate and legal interest groups.

[READ MORE >](#)

OUR SERVICES

Promote Legal Conferences, Events and Seminars

Advertise with GoLegal

[Privacy Policy](#)

FOLLOW US



SIGN UP FOR OUR NEWSLETTER

Want the latest legal news and views in your box?

[SUBSCRIBE](#)