

New political party not immune to trademark laws

By [Eben van Wyk](#)

31 Oct 2008

As preparations for South Africa's new political party gather momentum ahead of Sunday's planned National Convention in Bloemfontein, so, too, does speculation regarding the possible name of the party. A political party is, however, not immune to the trademark laws of South Africa and would need to choose its name, logo and colour combinations in accordance with the provisions of the Trademarks Act.

There have been indications that the name and colours of the new party may be unveiled at Sunday's meeting. During a recent interview on SAfm, the likely leader of the new party, Mosiuoa Lekota, stated, "At the convention people must decide what they want to do with themselves. There has to be debate, what will you call it (the party)... Obviously there will be lots of names and so on. We say to the people: "You go back to your constituency and see which names, which colours, which emblems."

Appears to be

The preferred name at this stage appears to be the "South African National Congress" ("SANC") or even the "African National Congress of South Africa" ("ANCSA").

At a recent meeting of disgruntled ANC members at Orange Farm on 22 October 2008, supporters of the new party were seen wearing yellow T-shirts with a printed photograph of Lekota's face and the words, "South African National Congress". Other media reports have also noted that Lekota has indicated that the new party will likely be called the "South African National Congress".

It is also reported that after a meeting held at a primary school in Cape Town on 19 October 2008, a crowd of about 1200 people were allegedly encouraged to sign membership forms for the "African National Congress of South Africa" ("ANCSA").

A political party is, however, not immune to the trademark laws of South Africa and would need to choose its name, logo and colour combinations in accordance with the provisions of the Trademarks Act.

Trademark law implications

Whenever a new company, product or service is launched, the trademark law implications should be considered in the development of the brand. Similarly, although it seems a bit of a simplification of the matter, the name of the new political party is a brand or trademark similar to a trademark used to distinguish the services of any other service provider or

company. Such brand or trademark obviously will be used to "sell" the party to the general voting public.

A search of the Trademarks Office Register revealed that the African National Congress is the proprietor of the ANC and African National Congress trademarks, as well as numerous ANC device (logo) marks in South Africa. The ANC has no doubt built up a considerable reputé in its trademarks in South Africa (and worldwide) and these trademarks might be considered to be well-known trademarks in terms of the Trademarks Act.

The ANC is therefore protected, as any other trademark proprietor, against infringement of its trademark rights and may prevent the use or registration of trademarks which are confusingly similar to its trademarks.

Not leave decision up to the masses

The new political party should take a considered view in the naming and branding of the party and not leave the decision up to the masses. The name of the new party should be distinguishable from the ANC and the African National Congress trademarks. The favoured names for the new party, namely, the South African National Congress (SANC) and the African National Congress of South Africa (ANCSA), may well be deemed to be confusingly similar to the existing ANC and African National Congress trademarks and could infringe on the existing rights of these parties.

It should also be noted that a colour trademark could be registered and protected in SA if it can perform the trademark function of distinguishing the products or services for which it is used from that of another, and identifying the origin of the products or services.

Although it appears as if the ANC has not registered the combination of yellow, black and green as a colour trademark, common law rights have certainly vested in this colour combination and the new political party may even be prevented from using the yellow, black and green colour combination.

ABOUT THE AUTHOR

Eben van Wyk is director of business law firm Cliffe Dekker Hofmeyr (www.cliffedekker-hofmeyr.com), specialising in intellectual property. Contact Eben on tel +27 (0)21 481 6311 or email eben.vanwyk@dlacdh.com

For more, visit: <https://www.bizcommunity.com>