

Swartland Winery wins trademark case on appeal

Swartland Winery is the exclusive owner of the mark Swartland when it comes to alcoholic beverages; the decision from the Appeal Court in Bloemfontein has upheld the original case, which decided that the use of Swartland on bottles of wine produced for export by Groupe LFE (SA) (defendant) was a trademark infringement.

According to the winery, its use of the mark 'Swartland' stretches back for some 60 years. The mark has become closely associated by the public with the winery and its award-winning wines. Although these facts were disputed during argument, Groupe LFE was not able to controvert these with appropriate evidence.

The case, which began in 2008, when Swartland Winery sued Groupe LFE for its use of the word was counter-argued by the defendant that it used the name 'Swartland' as a geographical indication (as it is entitled to do) and not as a trademark and that its wines are actually sold as no-name brands.

The Appeal Court held that the submission was without any merit for various reasons including the fact that the main label had the word 'Swartland' in prominent lettering, 6 mm high, with the words 'wine of origin' in Afrikaans above the name in fairly indistinct gold lettering, 2 mm high. The Court held that if the intention had been that this was supposed to be read 'wine of origin Swartland', the phrase 'wine of origin Swartland', which appears at the foot of the label in 3 mm letters, would have been redundant.

Accordingly, the Court held that the plea was not genuine and in good faith, using the mark 'Swartland' to indicate the geographical origin of its wines but, instead, it is using the mark as a trademark.

As a final defence, the defendant sought, by means of its counter-application, expungement of the winery's trade mark registration on various grounds but most importantly section 10(2) (b) which states that a mark may not be registered as a trademark or, if registered, is liable to be removed from the register if it consists exclusively of a sign or an indication which may serve, in trade, to designate the geographical origin of the goods.

The Court held that the Swartland trademark registration was valid and enforceable and provides the winery the exclusive rights to use the mark 'Swartland' as a trademark for alcoholic beverages.