

**Cadac (Pty) Ltd v Weber-Stephen Products Company and others
[2011] 1 All SA 343 (SCA)**

Division: SUPREME COURT OF APPEAL
Date: 16 September 2010
Case No: 530/09
Before: LTC HARMS DP, RW NUGENT, VM PONNAN, JB SHONGWE JJA and R PILLAY AJA
Sourced by: A Street
Summarised by: DPC Harris

[. Editor's Summary .](#) [Cases Referred to .](#) [Judgment .](#)

[1] *Civil procedure - Inquiry into a claim for damages - Claim arising from confiscation of goods - Counterfeit Goods Act 37 of 1997 - Sections 10(1) and 17(1) - Whether proceedings launched by appellant for an inquiry into damages was competent because it is not permissible to bring an illiquid claim by means of motion proceedings - Where appellant was not seeking to have its illiquid claim decided by means of motion proceedings but was seeking directions as to how to proceed with the quantification of its claim for damages to which it was entitled, proceedings were competent.*

[2] *Civil procedure - Prescription - Prescription Act 68 of 1969 - Section 15(2) - Section provides that the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment - There is no time limit stated in section 15(2) within which the claim must be prosecuted with success.*

[3] *Intellectual property - Counterfeit goods - Claim for damages arising from confiscation of goods in terms of section 17(1) of the Counterfeit Goods Act 37 of 1997 - Section 17(1) provides that any person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit is entitled to claim compensation from the complainant for that damage or loss.*

Editor's Summary

Similar products, manufactured and distributed by the first respondent and the appellant respectively, led to the dispute in this case. The first respondent, a US company, was the registered owner of trademarks that related to the shape and configuration of barbeque kettle grills. The appellant also manufactured kettle grills and had a kettle grill on the local market for some 18 months when it decided to introduce another model during November 2004. That led to an allegation of trade mark infringement by the first respondent. The appellant refuted such allegation, and the first respondent then alleged that the appellant was guilty of counterfeiting and threatened to lay a charge under the Counterfeit Goods Act 37 of 1997 (the "Act"). Although the appellant again refuted the allegations, the first respondent proceeded to lay a complaint without notice to the appellant and without disclosing the fact that the appellant had asked for notice and had provided it with a detailed defence. An inspector appointed under the Act, acting on the allegations in the first respondent's affidavit, applied for a warrant from a magistrate in chambers authorising him to seize the appellant's kettle grills. The warrant was executed during the Christmas season and kettle grills in the possession of dealers were also confiscated. The appellant alleged that it suffered loss as a result.

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In an urgent application, the appellant sought the setting aside of the warrant in light of the underhand manner in which it had been obtained. It also applied for a declaration that the goods seized were not counterfeit and for an inquiry into damages. The court hearing the application found that the warrant had been obtained irregularly and set it aside. It ordered the return of the appellant's goods. The court did not express any view about whether or not the appellant's product was counterfeit. It also postponed *sine die* the prayer for an inquiry into damages.

The appellant did not take further formal steps in relation to the inquiry into damages until three years after the judgment, when it applied by means of an interlocutory application for directions for the conduct of the inquiry. The first respondent responded with a counter-application for an order declaring that the appellant's claim had become prescribed.

Held - The prayer relating to an inquiry into damages flowed from the provisions of section 17(1) of the Act, which provides that any person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit is entitled to claim compensation from the complainant for that damage or loss. That had to be read with [section 10\(1\)\(c\)](#) which states that a court in any proceedings relating to counterfeit goods may order that the complainant pays damages, in an amount determined by the court, to the person from whom those goods were seized and pays that person's costs.

The first issue to be decided was whether the proceedings launched by the appellant for an inquiry into damages was competent because it is not permissible to bring an illiquid claim by means of motion proceedings. Motion proceedings are principally for the resolution of legal issues, and are not geared to deal with factual disputes, and illiquid claims by their very nature involve the resolution of factual issues. While the Court acknowledged the correctness of the above statements of the law by the first respondent, it held that the appellant was not seeking to have its illiquid claim decided by means of motion proceedings and that the objections had no bearing on the matter. What the appellant was seeking were directions as to how to proceed with the quantification of its claim for

damages to which it was entitled. The Court pointed out that courts have refused to make orders for an inquiry into damages because the relief, which is found in English procedural law, is not dealt with in our court rules. However, courts are able to craft an appropriate order for an inquiry into damages without the need for a rule. The Court did not see why as a matter of principle and in a particular case, a plaintiff who wishes to have the issue of liability decided before embarking on quantification, may not claim a declaratory order to the effect that the defendant is liable, and pray for an order that the quantification stand over for later adjudication. And once the principle was accepted for trial actions there was no reason why it could not apply to application proceedings.

One of the Court's findings in dismissing the first respondent's contentions on the issue of prescription related to the interpretation of [section 15](#) of the Prescription Act [68 of 1969](#). The first respondent relied on [section 15\(2\)](#) of the Prescription Act which provides that the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment. The argument was that since the appellant did not prosecute its claim to a final judgment, the

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claim became prescribed. The Court enquired into when the claim had prescribed. The first respondent's suggestion was that the claim had prescribed within three years from the judgment which set aside the warrant. However, the Court pointed out that there is no time limit stated in [section 15\(2\)](#) within which the claim must be prosecuted with success. Extinctive prescription limits the time within which proceedings must be instituted but once instituted its continuance is governed by the rules of court. The reason is that while the initiating step (the issue of process) is within the power of the creditor, the subsequent conduct of the proceedings might not be. Thus, the failure to prosecute did not in the circumstances of this case lead to the extinction of the claim by prescription.

The dismissal of the first respondent's defences led to the appeal being upheld. It was ordered that a date should be set for an inquiry to be conducted by way of a High Court trial for the purposes of determining the amount of compensation to be paid by the respondents to the appellant as contemplated in section 10(1)(c) of the Counterfeit Goods Act.

Notes

For Civil Procedure see:

- . LAWSA Reissue (Vol 3(1), paras 1-441)
- . Harms, LTC *Civil Procedure in the Superior Courts* Durban LexisNexis Butterworths 2005

For Intellectual Property see:

- . LAWSA First reissue Vol 29
- . Burrell TD *Burrells South African Patent and Design Law* 3ed Durban LexisNexis Butterworths 1999

Cases referred to in judgment

South Africa

<i>Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd</i> [1978] 4 All SA 724 (1978 (4) SA 696) (T) - Referred to	349
<i>Begeman v Cohen</i> 1927 TPD 674 - Referred to	350
<i>Cadac (Pty) Ltd v Weber-Stephen Products Co</i> 2005 Burrell's IP 439 (W) - Referred to	347
<i>Cape Town Municipality and another v Allianz Insurance Co Ltd</i> [1990] 1 All SA 30 (1990 (1) SA 311) (C) - Referred to	351
<i>Chauke v President Insurance Co Ltd</i> [1978] 2 All SA 226 (1978 (2) SA 947) (W) - Not followed	351
<i>Cohen Lazar and Co v Gibbs</i> 1922 TPD 142 - Referred to	350
<i>Cole's Estate v Oliver</i> 1938 CPD 464 - Referred to	350
<i>Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier, SA Polisie, Noord-Transvaal</i> 1972 (1) SA 376 (A) - Referred to	350
<i>Die Bergkelder Bpk v Vredendal Koöp Wynmakery and others</i> [2006] 4 All SA 215 (2006 (4) SA 275) (SCA) - Referred to	347
<i>Haggard Co v SA Tailorcraft (Pty) Ltd and another</i> [1985] 3 All SA 1 (1985 (4) SA 569) (T) - Referred to	349
<i>Hart v Cohen</i> (1899) 16 SC 363 - Referred to	350
<i>Harvey Tiling Co (Pty) Ltd v Rodomac (Pty) Ltd and another</i> [1977] 1 All SA 481 (1977 (1) SA 316) (T) - Referred to	349

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Modder East Squatters and another v Modderklip Boerdery (Pty) Ltd;
President of the RSA and others v Modderklip Boerdery (Pty) Ltd [2004] 3
All SA 169 (2004 (6) SA 40) (SCA) - Referred to 349

Montres Rolex SA v Kleynhans [1985] 1 All SA 220 (1985 (1) SA 55) (C) -
Referred to 348

National Director of Public Prosecutions v Zuma [2009] 2 All SA 243
(2009 (2) SA 277) (SCA) - Confirmed 348

President of the RSA and another v Modderklip Boerdery (Pty) Ltd and
others 2005 (8) BCLR 786 (2005 (5) SA 3) (CC) - Referred to 350

Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd
1949 (3) SA 1155 (T) - Confirmed 348

Sieberhagen v Grunow [1957] 2 All SA 249 (1957 (3) SA 485) (C) -
Referred to 351

Titus v Union and SWA Insurance Co Ltd [1980] 3 All SA 607
(1980 (2) SA 701) (TK) - Confirmed 351

Van der Merwe v Protea Insurance Co Ltd [1982] 3 All SA 426
(1982 (1) SA 770) (E) - Referred to 352

Williams v Tunstall 1949 (3) SA 835 (T) - Referred to 348

United Kingdom

R v Johnstone [2003] UKHL 28 - Referred to 347

Judgment

HARMS DP:

Introduction

- [1] The first respondent, Weber-Stephen Products Co, a US company, is the registered owner of trademarks that relate to the shape and configuration of barbecue kettle grills. Its sole distributor in South Africa is the second respondent, Galactex Outdoor (Pty) Ltd. The appellant, Cadac (Pty) Ltd, also manufactures kettle grills and had a kettle grill on the local market for some 18 months when it decided to introduce another model during November 2004.¹
- [2] This gave rise to correspondence between the parties in which the respondents (to whom I shall simply refer as Weber-Stephen) alleged trademark infringement, something Cadac denied. Weber-Stephen then alleged that Cadac was guilty of counterfeiting and threatened to lay a charge under the Counterfeit Goods Act [37 of 1997](#). In spite of Cadac's detailed refutation of the allegations, the respondents proceeded to lay a complaint without notice to Cadac in terms of [section 3](#) of the Act by means of an affidavit and without disclosing the fact that Cadac had asked for notice and had provided it with a detailed defence.
- [3] An inspector appointed under the Act, acting on the correctness of the allegations in the affidavit, applied for a warrant from a magistrate in chambers authorising him to seize Cadac's kettle grills ([section 6\(1\)](#)). The warrant was executed during the Christmas season and kettle grills in the possession of dealers were also confiscated. Cadac alleges that it suffered some loss as a result.

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- [4] On 13 January 2005, Cadac applied on an urgent basis for a setting aside of the warrant in the light of the underhand manner in which it had been obtained. It also applied for a declaration that the goods seized were not counterfeit and for an inquiry into damages and for costs.
- [5] The application was heard by Schwartzman J on 25 February, and in a fully reasoned judgment of 18 March he came to the conclusion that the warrant had been obtained irregularly and he set it aside with costs and ordered the return of Cadac's goods.² Weber-Stephen sought leave to appeal from the learned Judge and from this court but without success.
- [6] Because of this finding, the learned Judge thought it unnecessary to express any view about whether or not the Cadac product was counterfeit. This he did in spite of the fact that:
"the striking feature about counterfeit cases is that they are legally very simple: they do not involve serious disputes over the boundaries of the trademark owner's rights. In mimicking the goods and the trademarks, the conduct of counterfeiters clearly falls within the ambit of conduct that a trademark owner is entitled to prevent."³
Counterfeiting involves deliberate and fraudulent infringement of trademarks⁴ and "counterfeit cases involve

an infringer attempting to reproduce - and substitute for - the goods (not just the trademark) of the trademark owner." [5](#) That is why the Act is concerned with trademark and copyright infringements that are criminal in nature. The Act does not permit a rights holder to steal a march on an alleged infringer in order to settle a *bona fide* dispute about the boundaries of rights. Those disputes should be litigated under either the Trade Marks Act or the Copyright Act. [6](#)

[7] The prayer relating to an inquiry into damages flowed from the provisions of section 17(1) of the Act, which provides that any person suffering damage or loss caused by the wrongful seizure, removal or detention of goods alleged to be counterfeit is entitled to claim compensation from the complainant for that damage or loss. This must be read with [section 10\(1\)\(c\)](#) which states, *inter alia*, that a court "in any civil or criminal proceedings relating to counterfeit goods" may order:

"that the complainant pays damages, in an amount determined by the court, to the person from whom those goods were seized and pays that person's costs."

[8] The court postponed this prayer *sine die*. For reasons that are not now germane, Cadac did not take further formal steps in relation to the inquiry into damages until three years and two days after the judgment of Schwartzman J when it applied by means of an interlocutory application

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for directions for the conduct of the inquiry, something not regulated by any court rule. The crux of Weber-Stephen's answer was a multi-faceted reliance on prescription (in some instances somewhat of a misnomer) and a counter application for an order declaring that Cadac's claim had become prescribed. Not all were persisted in during the appeal.

[9] One of these arguments was based on the fact that Schwartzman J did not deal with the question whether or not the goods were counterfeit. Weber-Stephen argued in the court below that the provisions of [section 10\(1\)\(c\)](#) and section 17(1) in those circumstances did not provide a cause of action for the recovery of damages. The cause of action, according to the submission, was dependent on a finding that the goods were not counterfeit. Brett AJ dismissed the argument and Weber-Stephen did not attempt to revive it in this court. It does not appear from the papers that Weber-Stephen has instituted any trademark infringement proceedings against Cadac.

Inquiry into damages: is it permitted?

[10] The first issue to decide is whether the proceedings launched by Cadac for an inquiry into damages is competent because, as was argued by Weber-Stephen, it is not at all permissible to bring an illiquid claim by means of motion proceedings. This much was said by Murray AJP in *Room Hire*. [7](#) The main reason for the statement is in general terms unobjectionable. It is that motion proceedings are not geared to deal with factual disputes - they are principally for the resolution of legal issues [8](#) - and illiquid claims by their very nature involve the resolution of factual issues. The related reason concerns the lack of pleadings. [9](#) The other objection, namely that motion proceedings give the applicant a procedural advantage because the respondent is not entitled to rely on a bald denial as is possible in trial proceedings and that it would be unfair to deprive the respondent of this advantage, no longer holds water. [10](#) Litigation is not a game.

[11] The fact of the matter is that Cadac does not seek to have its illiquid claim decided by means of motion proceedings and that these objections have no bearing on the matter. What it does seek are directions as how to proceed with the quantification of its claim for damages to which it is entitled by virtue of the statute and the findings by Schwartzman J. [11](#) The irony of the objection is that if it had proceeded by way of application for an interdict based on trademark infringement, Weber-Stephen, if successful, would have been entitled to an order directing an inquiry into

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damages and directions as to the procedures to be followed. [12](#) But since the proceedings by Cadac are not trademark infringement by a quirk of somewhat ossified procedural law the same procedure is said not to be available.

[12] Courts have refused to make orders for an inquiry into damages because the relief, which is found in English procedural law, is not dealt with in our court rules. [13](#) But, as Nicholas J pointed out in *Harvey Tiling*, [14](#) such orders have been granted without objection in patent actions at a time when there was no available local rule. And, as he showed, courts are able to craft an appropriate order for an inquiry into damages without the need for a rule. One finds regularly that parties agree or courts order that issues concerning liability are to be decided first and quantum thereafter. But the present rigid system requires of a plaintiff to particularise its damages when instituting action, sometimes a costly exercise which may prove to have been unnecessary.

[13] I cannot see any objection why, as a matter of principle and in a particular case, a plaintiff who wishes to have the issue of liability decided before embarking on quantification, may not claim a declaratory order to the effect that the defendant is liable, and pray for an order that the quantification stand over for later adjudication. It works in intellectual property cases albeit because of specific legislation but in the light of a court's inherent jurisdiction to regulate its own process in the interests of justice - a power derived from common law and now entrenched in the Constitution [of the Republic of South Africa, 1996 - Ed] ([section 173](#)) - I can see no justification for refusing to extend the practice to other cases. The plaintiff may run a risk if it decides to follow this route because of the court's discretion in relation to interest orders. It might find that interest is only to run from the date when the debtor was able to assess the quantum of the claim. [15](#) Another risk is that a court may conclude that the issues of liability and quantum are so interlinked that it is unable to decide the one without the other.

[14] Once the principle is accepted for trial actions there is no reason why it cannot apply to application proceedings. In *Modderklip*,¹⁶ which was brought on notice of motion, this court issued an order for the determination of the quantum of damages based on the formulation used in *Harvey Tiling (supra)*. The order of the Constitutional Court was in this

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regard identical.¹⁷ The fact that the order related to "constitutional" damages does not affect the procedural principle.

[15] There is, without derogating from the foregoing, an additional reason why the procedure is permissible in this case. Section 10 of the Act provides that an order for damages may be ordered against a complainant "in any civil or criminal proceedings relating to counterfeit goods." Cadac's application to set aside the warrant was such a proceeding within the meaning of the section, which does not require separate proceedings for the determination of quantum. In the absence of rules regulating these quantification proceedings, a court has to prescribe an appropriate procedure.

The causa of Cadac's claim

[16] The issue relating to the nature of Cadac's claim arises from Weber-Stephen's argument that at the time that the main application was launched the right to damages had not yet accrued and that the proceedings for the recovery of damages (albeit in the form of an inquiry into damages) were accordingly premature. This argument was based on the supposition that the warrant was not void but voidable and that a cause of action for wrongful attachment of goods could only arise once the warrant has been set aside - until then it remains valid. As was said by Trollip JA, until a warrant like the one in the instant case is set aside 'it continues to have the effect of justifying the proposed attachment [citations omitted] and, without more, the appellant cannot obtain the interdict it seeks.'¹⁸

[17] The learned Judge was concerned with an application for an interdict to prevent the police from attaching certain gambling machines. The police in answer relied on a warrant issued by a magistrate. The application, the judge said, could not be regarded or treated as including a claim to have the warrant set aside because there was not a timely attack on its validity (the attack, it would appear, came in the replying affidavit). Without such a claim, the interdict could not be granted. This means that the interdict could have been granted if in the same proceedings there was a prayer, which was successful, for the setting aside of the warrant.

[18] The cause of action for an interdict and one for damages are the same. Only the nature of the relief differs. And although there are statements in cases that damages can only be sought after a warrant had been set aside, those statements must be read in context. They dealt with the distinction between malicious attachments and wrongful ones. Because a writ is a defence against a claim based on the former the claim cannot succeed unless the writ is set aside.¹⁹ To anticipate reliance on a writ by the

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defendant, a plaintiff must include a claim for having it set aside. No one ever suggested that two proceedings, one for setting aside and the next for damages, are required. The reason is apparent. The declaration of invalidity operates retrospectively and not prospectively. This means that once a warrant is set aside it is assumed that it never existed and everything done pursuant thereto was consequently unlawful.

[19] I, therefore, conclude that the claim relating to damages in the application to set aside the warrant was not premature. The notice of motion was a process whereby proceedings were instituted as a step in the enforcement of a claim for payment of a debt.²⁰ This means that the running of prescription was interrupted in terms of [section 15\(1\)](#) of the Prescription Act [68 of 1969](#).²¹

Failure to prosecute the claim for damages

[20] I have mentioned that Cadac had failed to further prosecute its damages claim until it launched the present proceedings on 20 March 2008. Because of this delay, Weber-Stephen relied on [section 15\(2\)](#) of the Prescription Act which provides, *inter alia*, that "the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment." The argument was that since Cadac did not prosecute its claim to a final judgment the claim became prescribed. For this proposition reliance was placed on the judgment in *Chauke*.²²

[21] The immediate problem with the argument is this: when did the claim prescribe? Counsel suggested within three years from the judgment of Schwartzman J, but there is no time limit stated in [section 15\(2\)](#) within which the claim must be prosecuted with success. It could just as well have been three days, weeks or months. In any event, Munnik CJ analysed [section 15\(2\)](#) in *Titus*²³ and came to the conclusion that *Chauke* was incorrect. I can do no better than to rely on his reasoning. He pointed out, with reference to *Kuhn v Kerbel and another* [1957 \(3\) SA 525](#) (A) [also reported at [\[1957\] 3 All SA 365](#) (A) - Ed], a case decided under the Prescription Act [18 of 1943](#), that the Act rendered a right unenforceable after the lapse of a certain time, but did not purport to deal with the time within which proceedings had to be concluded. Extinctive prescription, it held, limits the time within which proceedings must be instituted but once instituted its continuance is governed by the rules of court. The reason is that while the initiating step (the issue of process) is within the power of the creditor the subsequent conduct of the proceedings might not be.²⁴

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[22] Munnik CJ further held that the introduction of [section 15\(2\)](#) of the 1969 Act did not affect this reasoning. He focussed on the word "successfully" and held that only if a creditor's claim fails the provision comes into force. The practical effect of this is that, should absolution be granted, the plaintiff cannot be said to have successfully prosecuted the claim to final judgment. The same would apply, he said, if an exception is taken and the plaintiff cannot amend but has to issue a fresh summons (an unlikely event). Another example appears from a later case where a plaintiff withdrew the action in one court in order to institute it in another: since the first summons was not successfully prosecuted it could not interrupt prescription.²⁵

[23] The learned Judge concluded (at 704F-H):

"It is not unreasonable to assume that what the legislator had in mind was the following: It is necessary that there should be finality in litigation. The plaintiff is given a reasonable time within which to institute his action, thereafter he is in the hands of the administration of the Courts. Certain Rules are laid down, time is given in which certain procedures have to be carried out in regard to the pleadings and there is a general provision in every Rule of Court in terms whereof the Court can always extend the time and furthermore he has other factors to contend with . . . which all make it impossible for him to have any direction over the length or duration of the proceedings once he has instituted them."

[24] This means that the failure to prosecute did not in the circumstances of this case lead to the extinction of the claim by prescription. I do not thereby wish to condone the lackadaisical manner in which Cadac dealt with the matter but, as Munnik CJ said (at 705A-B), the debtor to a certain extent has a say in the running of prescription by enforcing the rules of court. In this case, Weber-Stephen could have enrolled the case for dismissal of the postponed relief.

Conclusion

[25] This means that Weber-Stephen's defences to the relief sought were without merit. The parties are agreed that the following order should issue in that event and it is ordered as follows:

- 1 The appeal is upheld with costs, including the costs of two counsel.
- 2 The order of the court below is set aside and replaced with an order in these terms:
 - (a) The interlocutory application is upheld with costs, including the costs of two counsel.
 - (b) The counter-application is dismissed with costs, including the costs of two counsel.
 - (c) The Registrar of the South Gauteng High Court is directed to fix a date for an inquiry to be conducted by way of a High Court trial for the purposes of:
 - (i) the determination of the amount of compensation to be paid by the respondents to the applicant as

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contemplated in [section 10\(1\)\(c\)](#) of the Counterfeit Goods Act [37 of 1997](#); and

- (ii) the payment by the respondents, jointly and severally, the one paying the others to be absolved, to the applicant of the amount of compensation found to be due to the applicant pursuant to the determination, together with interest on such amount at the prescribed rate of interest from the date of such determination until the date of payment and the costs of the determination.
- (d) The applicant shall within 20 (twenty) days of the date of this order serve upon the respondents and file a declaration particularising the damages allegedly suffered by it as a result of the seizure of its goods under the search and seizure warrant issued on 10 December 2004.
- (e) The respondents, if so advised, shall with 10 (ten) days of the service of the applicant's declaration, file a plea thereto.
- (f) The Uniform Rules of Court relating to discovery, inspection and all other matters of procedure shall apply to the determination.
- (g) The parties are authorised, on notice to the other parties and should it be required by one or both of them, to make application to the South Gauteng High Court to add to, or vary the above order so as to facilitate the conducting of the determination and generally to make application for further directions in regard thereto.

(Nugent, Ponnar, Shongwe JJA and R Pillay AJA concurred in the judgment of Harms DP.)

For the appellants:

J Bester SC and NJ Tee instructed by DM Kisch Incorporated

For the respondents:

GE Morley SC and A Annandale instructed by Spoor and Fisher Attorneys

Footnotes

- 1 The third and fourth respondents were inappropriately cited for purposes of the appeal.
- 2 The judgment has been reported: *Cadac (Pty) Ltd v Weber-Stephen Products Co* 2005 Burrell's IP 439 (W).
- 3 Jason Bosland, Kimberlee Weatherall and Paul Jensen "Trademark and counterfeit litigation in Australia" at

- 4 R v Johnstone [2003] UKHL 28.
5 *Ibid.*
6 Trademarks that relate to shape and configuration have their own peculiar problems: *Die Bergkelder Bpk v Vredendal*
7 *Koöp Wynmakery and others* [2006 \(4\) SA 275](#) (SCA) para 8 [also reported at [\[2006\] 4 All SA 215](#) (SCA) - Ed].
8 *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* [1949 \(3\) SA 1155](#) (T).
9 *National Director of Public Prosecutions v Zuma* [2009 \(2\) SA 277](#) (SCA) para 26 [also reported at [\[2009\] 2 All SA 243](#)
10 (SCA) - Ed].
11 *Montres Rolex SA v Kleynhans* [1985 \(1\) SA 55](#) (C) at 70B [also reported at [\[1985\] 1 All SA 220](#) (C) - Ed].
12 *Williams v Tunstall* [1949 \(3\) SA 835](#) (T) at 839.
13 The notice of motion was for an order directing an inquiry into the damages due to Cadac, a direction in relation to the
14 procedure to be followed, an order that the respondents pay those damages, and an order in relation to interest.
15 Trade Marks Act [194 of 1993](#) - [s 34\(4\)](#).
16 *Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd* [1978 \(4\) SA 696](#) (T) [also reported at [\[1978\] 4 All SA](#)
17 [724](#) (T) - Ed]; *Montres Rolex SA v Kleynhans loc cit*; *Atlas Organic Fertilisers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd*
18 [1978 \(4\) SA 696](#) (T); *Haggar Co v SA Tailorcraft (Pty) Ltd and another* [1985 \(4\) SA 569](#) (T) at 582A-C [also reported at
19 [\[1985\] 3 All SA 1](#) (T) - Ed].
20 *Harvey Tiling Co (Pty) Ltd v Rodomac (Pty) Ltd and another* [1977 \(1\) SA 316](#) (T) at 328-330 [also reported at [\[1977\] 1](#)
21 [All SA 481](#) (T) - Ed].
22 Prescribed Rate of Interest Act [55 of 1975 s 4](#) read with [s 2A\(5\)](#).
23 *Modder East Squatters and another v Modderklip Boerdery (Pty) Ltd; President of the RSA and others v Modderklip*
24 *Boerdery (Pty) Ltd* [2004 \(6\) SA 40](#) (SCA) [also reported at [\[2004\] 3 All SA 169](#) (SCA) - Ed].
25 *President of the RSA and another v Modderklip Boerdery (Pty) Ltd and others* [2005 \(5\) SA 3](#) (CC) [also reported at
[2005 \(8\) BCLR 786](#) (CC) - Ed].
Cresto Machines (Edms) Bpk v Die Afdeling Speuroffisier, SA Polisie, Noord-Transvaal [1972 \(1\) SA 376](#) (A) at 395H.
Hart v Cohen (1899) 16 SC 363 at 369; *Cohen Lazar and Co v Gibbs* 1922 TPD 142 at 147-148; *Begeman v Cohen* 1927
TPD 674 at 676; *Cole's Estate v Oliver* 1938 CPD 464 at 468.
Cape Town Municipality and another v Allianz Insurance Co Ltd [1990 \(1\) SA 311](#) (C) at 334G-J [also reported at [\[1990\]](#)
[1 All SA 30](#) (C) - Ed].
"The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the
debtor of any process whereby the creditor claims payment of the debt."
Chauke v President Insurance Co Ltd [1978 \(2\) SA 947](#) (W) [also reported at [\[1978\] 2 All SA 226](#) (W) - Ed].
Titus v Union and SWA Insurance Co Ltd [1980 \(2\) SA 701](#) (Tk) [also reported at [\[1980\] 3 All SA 607](#) (Tk) - Ed].
Sieberhagen v Grunow [1957 \(3\) SA 485](#) (C) [also reported at [\[1957\] 2 All SA 249](#) (C) - Ed].
Van der Merwe v Protea Insurance Co Ltd [1982 \(1\) SA 770](#) (E) [also reported at [\[1982\] 3 All SA 426](#) (E) - Ed].