

**MEDIA RELEASE**

**NOT YOUR AVERAGE BREADWINNER**

**16 SEPTEMBER 2015**

*Written by Jeanette Visagie – Associate, Trade Mark Litigation Department, Adams & Adams*

*Verified by – Jenny Pienaar, Partner, Trade Mark Litigation Department, Adams & Adams*

Premier Foods (Pty) Ltd, represented by Adams & Adams, recently successfully defended a competitor complaint before the Advertising Standards Authority of South Africa ("ASA") by Pioneer Foods (Pty) Ltd. The matter related to the packing of pre-sliced white bread.

Pioneer's complaint was that the recently amended packaging of Premier's **MISTER BREAD** 600 gram pre-sliced white bread was contrary certain provisions of the ASA's Code of Advertising Practice, in that it imitated the packaging for its SASKO 700 gram pre-sliced white bread, and took advantage of the advertising goodwill that Pioneer claimed to have acquired in the packaging of that bread.

Images of the parties' respective bread packaging appear below – diagrams show comparisons and comments:

.MAIN

PANEL:



PREMIER



PIONEER

**BASE PANEL:**



**PREMIER**

**PIONEER**

In defending the ASA complaint, Premier first set out the reason for changing the packaging of its product, and pointed out that some of the main features of the current **MISTER BREAD** packaging (including the use of the colour combination blue, red, white and yellow) had been used in relation to the previous **MISTER BREAD** packaging, and had been used prior to Pioneer introducing its SASKO packaging.

Premier then dealt with the position in the trade relating to pre-sliced white bread. It pointed out and provided examples to illustrate that the use of the colour blue and/or the colour combination blue, red, white and yellow is common (alternatively, not uncommon) in relation to pre-sliced white bread in the trade. It also pointed out that pre-sliced bread is commonly packed by brand in stores and, considering that the parties' breads are sold in different quantities, it is unlikely that they will be sold side- by-side in the market.

In-store photos were provided to illustrate that, in the trade, pre-sliced bread is packed in such a manner that the base portion of the bread packaging is mainly visible to the consumer who selects bread in stores. Premier argued that the base portions of the parties' products, which would be one of the main portions of bread packaging that is seen by consumers selecting bread in stores, were sufficiently different to avoid consumer confusion.

Furthermore, Premier argued that the parties' respective brand names and trade marks,



**MISTER BREAD** and **SASKO**, are not similar, and sufficient to distinguish the parties' products.

In addition, it was pointed out there was a significant price difference between the parties' products.

In the ruling by the ASA Directorate of 7 July 2015, it dismissed Pioneer's complaint. The Directorate confirmed that the use of the colour blue and the colour combination blue, red, white and yellow is not original or unique, as several other bread manufacturers use that colour or colour combination in relation to pre-sliced white bread. It also held that, as both parties' brand names are instantly recognisable, the likelihood of confusion is low. In addition, the fact that breads are ordinarily stocked by brand, and considering the price difference between the parties' products, diminishes any likelihood of confusion.

In considering the claim based on imitation, the Directorate held that Pioneer had failed to show that the elements of its SASKO bread packaging which it claimed had been copied by Premier constitute crafted and original intellectual thought. The Directorate's also held that Pioneer had failed to show the similarities between the parties' packaging were not merely coincidental, and the overlapping elements that were present in both parties' packaging were not in common use in the trade in relation to pre-sliced white bread.

Ends.

Word Count: 606

For more information, contact, Megan Larter, communications, Adams & Adams, 012 432 6235 or 083 605 8859