

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 095598 / 2024

**COLGATE-PALMOLIVE (PTY) LTD & ANOTHER v BLISS BRANDS (PTY)
LTD & ANOTHER**

AND

Case no: 095617 / 2024

**BLISS BRANDS (PTY) LTD v THE ADVERTISING REGULATORY BOARD
NPC & 3 OTHERS**

LEGAL SUMMARY

The court deals with two interrelated applications involving Colgate and Bliss, where the parties switch roles in each case. In Colgate's application, they seek to hold Bliss in contempt of a court order of Manoim J. Conversely, Bliss's application requests a stay of an order from the Advertising Regulatory Board (ARB), pending a review. Both parties are seeking costs against each other.

The case involves ongoing litigation between Colgate and Bliss, centering on allegations that Bliss breached the Advertising Regulatory Board's (ARB) Code of Advertising Practice by imitating Colgate's Protex packaging with its Securex brand. The court determined that it is efficient to first hear Colgate's application, as its outcome will significantly influence whether Bliss's application can proceed. If Colgate's application is successful, Bliss's application may be dismissed; if unsuccessful, both applications will be fully considered.

Both Colgate and Bliss assert that their respective applications are urgent, while arguing that the other's is not. The court finds both claims unconvincing but recognises that each party could face significant commercial harm if their application is dismissed. Consequently, the court decides to treat both applications as urgent.

Bliss is accused of being in contempt of Manoim J's order for two reasons: (1) it allegedly tampered with its old Securex packaging, making only superficial changes that left it largely unchanged, and (2) it failed to remove advertisements featuring the old packaging from certain websites. The court agrees with a judgment of Judge Ngope's which found that the changes made were minimal, noting that despite slight alterations—like moving the variant name and changing colors—the old and new packagings are still strikingly similar. Therefore, the court concludes that Bliss has not complied with the Manoim J order.

Regarding the second allegation, Colgate demonstrated that the old packaging was still being advertised on some websites at the time of its application. While Bliss claimed to have taken steps to remove these advertisements, it failed to prove that these actions were effective. As of the hearing, the old packaging was still visible on Bliss's website, a fact that was not contested.

The court holds that the changes made to the old packaging are insufficient, and as a result, Bliss fails to comply with the Manoim J order. At the same time, Bliss has continued to advertise with the old packaging. Thus, it contravenes the said order.

The court further assessed whether the contravention constitutes contumacious conduct. The legal principles governing contempt of court require the applicant to establish three elements: (1) an order was granted against the alleged contemnor, (2) the contemnor was aware of the order, and (3) the contemnor failed to comply with it. If these elements are proven,

wilfulness and mala fides (bad faith) are presumed, placing the burden on the respondent to show reasonable doubt.

The court found the evidence presented did not convincingly demonstrate that Bliss's continued use of the old packaging was unintentional or that the modifications were substantial enough to show genuine compliance. The court concluded that the changes Bliss made were cosmetic and did not materially distinguish the new packaging from the old. As a result, Bliss failed to prove that its actions were a bona fide attempt to comply with the order. Additionally, Bliss did not refute the presumption of mala fides regarding its continued advertising of the old packaging. Ultimately, the court found that Bliss did not meet its evidentiary burden, leading to the conclusion that it is in contempt of Manoim J's order.

The court concluded that Bliss should be precluded from proceeding with its application while remaining in contempt of Manoim J's order. Although Colgate did not explicitly seek this relief in its notice of motion, the court found it appropriate to consider the issue based on Colgate's arguments in its answering affidavit.

The court emphasised that it has the authority to deny a contemnor audience until they purge their contempt. This sanction, while seemingly at odds with the right to access the courts, is justified in cases where a party is disrespectful of a court order. The court highlights the importance of maintaining its dignity and authority, noting that allowing Bliss to continue its application while in contempt would undermine this principle and disregard Colgate's interests.

Ultimately, the court rules that Bliss's application will not be heard until it has addressed its contempt. The impediment to Bliss's access to the court is not permanent and can be resolved simply by complying with the court's order. Thus, the delay in its application is a consequence of its own actions.

The court declared that the first respondent is in contempt of paragraph 3 of the order of Manoim J and is accordingly ordered to comply with the order. In the event that they fail to comply, the applicants are authorised to approach the court on the same papers, duly supplemented, for further relief. The first respondent is to pay the costs of this application on the scale as between attorney and client, such costs to include the costs consequent upon the employment of two counsel.

The Bliss application is struck from the roll. The applicant is not entitled to enrol the matter until it has purged its contempt of the Manoim J order. Each party is to pay its own costs.