

Sun hotels square off in Namibia

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The Namibian High Court recently issued a decision dealing with passing-off and copyright infringement in the matter of Southern Sun Africa (First Applicant) and Southern Sun Hotel Interests (Second Applicant) vs Sun Square Hotel (Respondent).



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The Applicants form part of the well-known South African hotel and entertainment group, Tsogo Sun. The First Applicant, Southern Sun Africa, a Mauritian company, is the proprietor of trade mark registrations for the Sun Square logo trade mark (depicted below) in South Africa. The Second Applicant, Southern Sun Hotel Interests, owns the copyright in the Sun Square logo, as an original artistic work. The Sun Square logo has been used in South Africa under licence from the First Applicant for many years in relation to hotel and related services.



In Mid 2015, the Applicants became aware that the Respondent, Sun Square Hotel, was operating a hotel in the neighbouring country, Namibia, under the name Sun Square, using an identical logo on its hotel signage, branding and guest amenities.

The First Applicant sought to restrain the Respondent's unauthorised use of the Sun Square word and logo marks, while the Second Applicant alleged the Respondent had infringed the copyright in the Sun Square logo.

The First Applicant does not operate a Sun Square hotel in Namibia, but it argued that it had established a reputation in the trade mark in the country through cross-border trade and spill-over advertising. Evidence of use of the mark in South Africa was submitted and the Court accepted that such evidence was sufficient to prove knowledge of the mark amongst a substantial number of people in the relevant sector in Namibia. The Court also found that the Second Applicant had established copyright in the Sun Square logo.

The Court found that the Respondent's unauthorised use of the Sun Square word and logo marks amounted to passing-off which, the Court stated resulted, or was calculated to result, "in the improper filching of the First Applicant's trade mark, an

improper infringement of its goodwill and may cause injury to the First Applicant's trade reputation".

The Court consequently granted the interdict restraining the Respondent from passing itself off as the First Applicant. An interdict for copyright infringement was also granted and the Second Applicant was awarded reasonable royalties and additional damages.

The Respondent has filed an appeal against the decision.

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