

SOUTH AFRICA / JUDGMENT

National Consumer Commission v Stonehill International (Pty) Ltd (NCT-233199-2022-73(2)(b)) [2022] ZANCT 67 (25 November 2022) [2022] ZANCT 67

COURT

National Consumer Tribunal

BEFORE

K Moodaliyar, C Sassman, A Potwana

CASE / FILE NUMBER

NCT-233199-2022-73(2)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

AT ONLINE VIA TEAMS

CASE

NUMBER: NCT-233199-2022-73(2)(b)

In

the matter between:

NATIONAL
CONSUMER COMMISSION
APPLICANT
And
STONEHILL
INTERNATIONAL (PTY) LTD
RESPONDENT
Registration
Number: 2001/025549/07

Coram: Prof.
Kasturi Moodaliyar – Presiding Tribunal Member
Adv.
Craig Sassman - Tribunal Member
Mr.
Andisa Potwana - Tribunal Member
Date
of Hearing: 6 October 2022
Documents
received: 19 October 2022

JUDGMENT

AND REASONS

THE PARTIES

1. The Applicant is the National Consumer Commission ("the Applicant" or "the Commission"), a regulatory entity created by section 85 of the Consumer Protection Act 68 of 2008 ("the CPA").
2. Mr Ludwe Biyana, a senior legal advisor in the Applicant's prosecution division, represented the Applicant at the hearing of this application.
3. The Respondent is Stonehill International (Pty) Ltd ("the Respondent"), a private company incorporated under the company laws of South Africa with company registration number 2001/025549/07.
4. The Respondent was represented by Adv.Heinrich Jansen van Rensburg, instructed by Webber Wentzel Attorneys.

APPLICATION

5. The Commission filed an application with the National Consumer Tribunal (the "Tribunal") in terms of section 73(2)(b) CPA. Section 73(2)(b) of the CPA provides that – "In the circumstances contemplated in subsection (1)(c)(iii), the Commission may refer the matter – (b) to the Tribunal. "Subsection (1)(c)(iii) provides that "After concluding an investigation into a complaint, the Commission may— (c) if the Commission believes that a person has engaged in prohibited conduct—(iii) make a referral in accordance with subsection (2);...".

JURISDICTION

6. Section 27 (a) (ii) of the National Credit Act, 2005 ("the NCA")

empowers the Tribunal or a Tribunal member acting alone to adjudicate allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in the NCA. Section 150 of the NCA empowers the Tribunal to make an appropriate order concerning prohibited or required conduct under the NCA or the CPA.

The Tribunal, therefore, has jurisdiction to hear this application.

BACKGROUND

7. On or about 9 November 2021, the South African Receiver of Revenue ("SARS") notified the Applicant that it had issued a Detention Notice in terms of section 113 (8) (a) of the Customs and Excise Act 91 of 1964 ("the CEA") against the Respondent.
8. The Respondent is an importer of goods into South Africa. According to the Detention Notice, certain goods imported by the Respondent were detained on suspicion that the importation thereof contravened

specific provisions of the CPA.

9. Based on the Detention Notice, the Applicant initiated an investigation in terms of section 73(2)(b) of the CPA and appointed two investigators to investigate the matter.
10. Before the inspection of the goods by the Applicant's inspectors, the Respondent furnished the inspectors with a Customs Declaration Form (SAD 500), Air Waybill, Customs Worksheet, the Invoice, and a Packing list which listed the following: the Importer is Stonehill International (Pty) Ltd located at 8 Julian Walk, Silversteen Estate,

Tokai Cape Town; the Respondent imported 7 Rolls of Silk Fabric by air; the Commodity Code(s) for the detained goods was reflected as quilts and bedspreads as listed in Chapter 94 of the Harmonized Customs Tariff. The goods are detained at the South Africa Customs

Office, Cape Town.

11. On 14 December 2021, the inspectors investigated whether the goods contained labelling as prescribed in section 24 of the CPA and regulation 6 of the CPA Regulations.
12. The inspectors found that the consignment consisted of 4 cartons of quilts containing 31 pieces, as detained by SARS. Twenty-six pieces of the quilts were found to have labels as per the trade description requirements in terms of the CPA and its Regulations, and 5 pieces of quilts of the goods contained no labels as required by the CPA and its Regulations.
13. The Applicant states that the Respondent's 5 pieces of quilts do not comply with the requirements of section 24 of the CPA and regulation 6 of the CPA Regulations, as they do not have any labels attached to them. Therefore, the Importer has contravened section 24(5) (a) of the CPA, read with Regulation 6(1)(a)(i) of the CPA Regulations.
14. The investigation report revealed that the Respondent imported 7 Rolls of Silk Fabric ("the goods") into the Republic of South Africa. On 9 November 2021, "SARS" issued a Detention Notice in terms of section 113 (8) (a) of the CEA. The goods came loose and were not in a container and were thus detained on suspicion

that the importation thereof contravened section 24 (5) read with Regulation 6 of the CPA.

15. The imported goods are listed in Annexure "D" of the CPA Regulations. The imported goods do not comply with the CPA, and its Regulations in that the goods do not have any trade description applied thereto clearly stating the Country of origin, the Country in which they were manufactured, produced, or adapted. It is alleged

that in this regard, the Respondent contravened section 24 (5) (a) of the CPA read with regulation 6 (1) (a) (I) of the CPA Regulations.

16. Section 24 (5) provides that: "The producer or Importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing-

(a) the Country of origin of the goods; and (b) any other prescribed information.

17. Regulation 6 (1) (a) and (b) provides as follows:

- (1) In order to assist consumers in making informed decisions or choices, for purposes of subsections (4) and (5) of section 24 of the Act and subject to sub-regulation (2), the importation into or the sale in the Republic of the goods specified in Annexure "D", irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless-

- (a) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible

manner stating clearly-

- (i) the Country in which they were manufactured, produced or adapted;

(ii) in the event of a textile manufacturer, Importer or seller operating in the Republic using imported fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and

(iii) that a locally manufactured product using imported material must state "Made in South Africa from imported materials".

- (b) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the Gazette of 30 June 2000.

18. In January 2021, the Respondent was found to have imported 48 boxes of silk throws under customs case number 375743291. On 31 March 2021, the Applicant issued a Compliance Notice calling upon the Respondent

to:

- (a) to remove to their country of origin or off the African continent, and at their own cost, the 48 boxes of silk throws;

- (b) as an alternative to paragraph (a) above and at their own cost, have the goods destroyed locally at an accredited destruction facility of their choice; and
 - (c) to refrain from importing goods, into the Republic of South Africa, in contravention of section 24(5)(a) read with regulation 6(1)(a)(i); and section 24 (5) (b) read with regulation 6(1) (b) of the CPA.
19. According to the Applicant, the Respondent initially communicated an intention to comply with the Compliance Notice and requested an extension of time to finalise the process of re-exportation. When the Applicant enquired whether the Respondent had complied with the Compliance Notice, the Applicant was initially informed that the goods were sent back to the Supplier. Then the Respondent informed the Applicant that the goods were re-exported to Mauritius, a country within the African Continent. When the Applicant confronted the Respondent about this, the Respondent stated that he thought Mauritius was off the African Continent. The Respondent later stated that it is practically impossible to export the goods to China because the matters drag on for too long and goods are eventually destroyed if they do not contain labels. The Applicant believed that the Respondent may have respected the law of other countries but showed disregard for the laws of the Republic.
20. The Applicant states that the Respondent has contravened the above-mentioned sections of the CPA and seeks various orders from the Tribunal. Amongst others, are the refund of the Commission's travel expenses incurred during the investigation amounting to R35 937, 28 and payment of an administrative fine of 10% of the Respondent's annual turnover or R1 million, whichever is the greater.
21. On 4 July 2022, the Registrar of the Tribunal issued a notice of filing. On 15 August 2022, the Registrar set the matter down to be heard on 6 October 2022.

THE HEARING

APPLICANT'S ARGUMENTS

22. At the hearing, the Applicant reiterated that there is a reasonable suspicion that the Respondent has contravened the labelling provisions of the CPA relating to the labelling of Textile Fabrics.
23. As regards the 7 rolls of silk imported, which were as loose (not in a container/ bale), the Applicant received the Detention Notice dated 24 November 2021. The Detention Notice stated that in terms of the SAD500, these goods were not in a container and upon inspection, SARS Customs observed the following in relation to the fabrics: " ... No labels indicating requirements are attached thereto ... "
24. On the SAD500 (ANNEXURE "B" supra), the Commodity Code for the Clothing is 5007.20.00(6) and the Item Description is " ... WOVEN FABRICS OF SILK OR OF SILK WASTE OTHER FABRICS, CONTAINING 85% OR MORE BY MASS OF SILK OR OF SILK WASTE (EXCLUDING NOil SILK) ... ".

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25. On the SARS Customs Harmonised Tariff Codes document, this category of goods appears in Chapter 50, which deals with " ... SILK .. "
26. On the SARS Customs Prohibited and Restricted List dated May 2021, there is a corresponding entry 50.07, which relates to the non-compliant "WOVEN FABRICS OF SILK OR OF SILK WASTE" which states "Clothing, textiles, fabrics and footwear:
- i) Must adhere to labelling requirements. Examples of care labelling symbols that may be found on products are provided in SC-CC-32-A01. ii) Not adhering to the labelling requirements Identified at the time of importation will be detained. Where the non-compliance cannot be resolved such goods may only be disposed of by:
- A) Re-exporting off the African continent, or
 - B) Destroying at the cost of the Importer... "
27. During the inspection, the goods were found to be without labels attached to them. In other words, the goods did not have a trade description applied thereto stating clearly:
- a) The Country of their origin or the Country in which they were manufactured, produced or adapted;
 - b) The fibre content; and
 - c) Care labelling required for the goods.
28. During the inspection, the Respondent's representative brought 7 stickers with the following information:
- a) Stonehill International/Stonehill International (Pty) Ltd;
 - b) 100% Mulberry Silk Fabric; and
 - c) from China.
29. The stickers had various serial numbers and did not contain care labelling at all. The inventory indicates that the Importer representative allegedly informed the Inspector that "the old labels had fallen off".
30. When asked by the Tribunal to provide further information regarding the definitions of importation and the requirements of the CPA, the Applicant stated that in terms of section 24(5) of the CPA, the producer or Importer of any goods that have been prescribed in terms of subsection (4) must apply a trade description to those goods, disclosing—
- (a) the Country of origin of the goods; and (b) any other prescribed information.

31. In terms of Regulation 6 for the CPA Regulations, in order to assist consumers in making informed decisions or choices, for purposes of subsections (4) and (5) of section 24 of the CPA and subject to sub-regulation (2), "the importation into or the sale in the Republic" of the goods specified in Annexure "D", irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless certain prescribed information is contained in the imported goods.
32. What is prohibited is the importation (in respect of goods being brought from outside the Republic) and sale (in respect of goods produced or manufactured within the Republic).
33. The word "Importation" is not defined in either the CPA or Regulations.
34. The CPA only defines an Importer as follows "with respect to any particular goods, means a person who brings those goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business". The CPA does not provide further definitions in this regard.
35. The Oxford dictionary defines importation as "the bringing of goods or services into a country from abroad for sale".
36. As to the process of importation, the Applicant outlined that:
 - (a) The Importer registers as an Importer with SARS Customs and is allocated an Importer code;
 - (b) The Importer sources the goods from outside the Republic and arranges that the goods be brought into the Republic;
 - (c) Goods arrive in the Republic by one of the following modes of transport: Air, Sea, Road, Rail, and Post, including transmission commodities like crude oil, natural gas and their derivatives and other liquids and gases transported through cross-border pipelines as well as electricity transmitted through cross-border transmission lines. Once the goods arrive, they are deemed to be imported/importation is complete;
 - (d) In order for Customs to safeguard any revenue due to the State and ensure compliance with national legislation, the Importer must declare to Customs what they have brought into the Country and the mode of transport used;
 - (e) Goods may enter the Republic and be cleared through one of these processes:
 - home consumption i.e. direct entry into South African Customs Union ("SACU") countries (duty is paid on importation or under rebate/relief from duties under specific circumstances/ conditions);
 - warehousing (pending payment of duty or re-export);
 - transit / in bond movements within the Country or through South Africa beyond the borders of SACU;

- temporary admission into SACU including inward processing (for manufacturing purposes and subsequent exportation); and
- (f) The process of declaration does not in any way affect the importation, it is merely for the purpose of safeguarding revenue. Importation is deemed complete at the time the goods enter the controlled area of the Republic.
- 37. It is common cause that the goods were detained by SARS Customs, on behalf of the Applicant, in terms of Section 113(8) (a) of the CEA by virtue of the goods not complying with the labelling requirements of

the CPA and Regulations. Section 113(8) (a)-(c) reads as follows:

- (a) An officer may, for the purposes of any law other than this Act or at the request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.
- (b) Such goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer;
- (c) No person shall remove any goods from any place where they were so detained or from a place of security determined by an officer.
- 38. The Applicant states that the CEA is therefore relevant in determining when the goods are considered to be imported for the purposes of the CPA and goes on further to say that section 10 of the CEA defines when goods are considered/deemed to be imported and reads as follows: For the purposes of this Act all goods consigned to or brought into the Republic shall be deemed to have been imported into the Republic-
- (a) in the case of goods consigned to a place in the Republic in a ship or aircraft, at the time when such ship or aircraft on the voyage or flight in question, first came within the control area of the port or airport authority at that place, or at the time of the

landing of such goods at the place of actual discharge thereof in the Republic if such ship or aircraft did not on that voyage or flight call at the place to which the goods were consigned or if such goods were discharged before arrival of such ship or aircraft at the place to which such goods were consigned;

- (b) in the case of goods not consigned to a place in the Republic but brought thereto by in the case of goods not consigned to a place

in the Republic;

- (c) subject to the provisions of subsection (2), in the case of goods brought to the Republic overland, at the time when such goods entered the Republic;
- (d) in the case of goods brought to the Republic by post, at the time of importation in terms of paragraph (a), (b) or (c) according

to the means of carriage of such goods; and

- (e) in the case of goods brought to the Republic in any manner not specified in this section, at the time specified in the General Notes

to Schedule 1 or, if no such time is specified in the said General Notes in respect of the goods in question, at the time such goods are considered by the Commissioner to have entered the Republic.

- 39. The Applicant states that although there is no principle of interpretation that requires a court to interpret one piece of legislation with reference to another, it may at times be appropriate to consider how another statute deals with a similar issue. The Tribunal should consider the definition in the CPA that the goods are considered to be imported the moment they enter a controlled area of the Republic.
- 40. Regarding interpretation, the Applicant prefers a literal interpretation whereby a fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning unless doing so would result in an absurdity.
- 41. It believes that whilst the Cool Ideas[1] case makes provision for a purposive or contextual approach to statutory interpretation, the law, however, cannot countenance a

situation where, on a case-by-case basis, the purposive approach is invoked to circumvent and subvert the plain meaning of a statutory

provision.

- 42. The invalidity of an act performed contrary to a statutory provision does not flow from the express terms of the prohibition but from the fact that the impugned act was performed contrary to a prohibition in

a statute. When the Legislature wants to put an end to a particular conduct, it prohibits it. A Court cannot give legal sanction to an act prohibited by the Legislature. The principle that what is done in breach of a statutory prohibition is invalid may be departed from only if it is clear from the language of the relevant legislation that invalidity was not envisaged.

- 43. The Respondent, in its papers, attached what it alleges to be labels to be attached to the goods. It later became clear during the argument that the Respondent is merely an importer and not a manufacturer of goods. There is no indication of what informs the labels to be attached.
- 44. According to the Applicant, the Importer approaches the labelling/application of trade description as a mere formality. Allowing the Importer to attach "formal compliant labels within the Republic would amount to giving legal effect to a prohibited act".

45. The Applicant argues that it is exercising its functions in terms of the CPA in requesting that the Respondent be prohibited from accessing the Goods for the purposes of making them available to the public.

RESPONDENT'S ARGUMENTS

46. According to the Respondent, it seeks to import and clear the 7 rolls of silk fabric into the Republic for use in the production and manufacturing of textile garments. The requisite 'trade description', including the 'country of origin' and fibre content, was, however, contained in documents and displayed with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated and described thereby as permitted by section 24(1)(b)

of the CPA.

47. The Respondent argues that the Applicant's replying affidavit is in stark contrast to its founding case, where a trade description could also be applied as contemplated in section 24(1)(b) of the CPA. The Applicant persists with its case against the Respondent. It continues to seek the most severe penalty permissible under the CPA in the circumstances where the Applicant had initially broadly accused the Respondent of contravening section 24(5)(a) and (b) of the CPA, as read with regulation 6(1)(a) and (b). However, the Applicant itself refused to acknowledge the applicability and ambit of the provisions of sections 24(1) (b) and (c), by incorrectly insisting that the requisite trade description had to be applied physically to the goods, as opposed to in any manner permitted by subsections 24(1)(b) or 24(c).

48. The Respondent states that it cooperated with the Applicant's investigation, and in a now belated attempt to establish a case against the Respondent, the Applicant has now impermissibly, in its replying papers, alleged that the Respondent is supposedly guilty of another offence in that the goods (from which final garments must still be made) did not contain 'care labelling'.

49. The Respondent denies that it contravened section 24(5)(a) and (b) of the CPA, as read with regulation 6(1)(a) and (b). It alleged and argued that the direct referral to the Tribunal in terms of section 73(2)(b) was unwarranted. In this respect, the Respondent submits that:

- (a) An importer ultimately has no control over the manner in which an exporter labels or describes (in accompanying documentation) goods that will arrive on the shores of the Republic;
- (b) If, when goods arrive in the Republic, it appears that a trade description has not been applied to such goods in any manner permitted by subsections 24(1)(a) to (c), due to no fault of the Importer, it must first be established whether any such failure may be attributable to the Importer;

- (c) Where any such failure is not attributable to the Importer, the preferable and proper course of conduct on the part of the Applicant would be to issue a compliance notice; and
 - (d) In any event, where any such failure is not attributable to the Importer, or where no compliance notice was issued, sanctions such as, inter alia, fines are unwarranted and do not align with or do not promote the purpose for which the CPA was promulgated.
50. The Applicant's case is now that the Respondent had not applied 'care labelling' to the 7 rolls of silk fabric. The additional accusation, according to the Respondent, is both impermissible and without merit,

because there is no obligation for care instructions to be attached to unfinished goods such as 7 rolls of silk, which will never touch the hands of a consumer until they are manufactured into finished products (which will indeed have such care labels).

51. It is common cause that the goods are 7 rolls of silk fabric, irrespective of the fact that the Inspector's Report incorrectly refers to a consignment of 4 cartons of quilts, containing 31 pieces. Moreover, it is not disputed that the goods are fabric, which is being imported for processing, and that such goods are not yet finished products and would not be made available to South African consumers in their current form. After the fabric has been imported, garments are manufactured from it. Indeed, the Applicant admits that the goods are considered unfinished products.
52. Concerning the alleged contravention of section 24(5)(a) - Trade Description and Country of Origin, the Respondent has submitted in both the letter dated 29 December 2021 and again in its Answering Affidavit that there are different ways for a trade description to be applied to goods, other than attaching a label, for there to be compliance with the CPA. This is made clear by the inclusion of sections 24(1)(b), and (c) of the CPA, which acknowledges that applying a label is not always possible, practical, or effective. This is particularly pertinent in the case of materials that will be used for manufacturing, as in the current instance.
53. Section 24(1)(b) of the Act considers a trade description to be applied to goods if it is "displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description" (own emphasis).
54. The Applicant has conceded and admitted that labels containing a trade description may also be contained in "advertisement invoices, catalogues, or a business letter" in paragraph 15.6 of the Replying Affidavit.
55. The Applicant further admits and concedes that "in respect of textiles that are passed between processors (unfinished products)

(e.g., fibre processors, yarn spinners, fabric knitter, fabric weaver, leather processor, coaters or finishers of synthetic leather,

leather and general goods manufacturer, or clothing, home textile or footwear manufacturer etc) and are not offered for sale to the consumer, a trade description may be contained in the commercial documents that accompany the goods, such as the Invoice, receipt,

brochure or pamphlet, relating to the specific textile".[2]

56. A packing list, waybill and invoice accompanied the goods and were at all material times in proximity to the goods, as required by section 24
- (1) (b) of the CPA. A packaging list, waybill and Invoice are considered commercial documents. [3]
57. According to the Respondent, what must be determined is whether the goods must absolutely arrive on the Republic's shores with such documentation or whether such documentation may be supplemented upon arrival if required.
58. The Respondent had informed the Applicant that the above commercial documents did indeed accompany the imported goods and were at all material times in close proximity to the goods.
59. The commercial documents contain both the Country of origin and the fibre content of the goods. The packaging list and Invoice bear the stamp and details of the Supplier in China, making it clear that the goods originated in China. The Respondent submits that no person could conclude other than that the origin of the goods is China. In addition to this, the Respondent provided a photograph taken at the time of dispatch of the goods in the letter dated 29 December 2021. In this photograph, there are seven numbered rolls of silk fabric, which correspond to the packaging list, which packaging list specifies the origin and fibre content of the goods.
60. The Applicant admitted that these commercial documents provided by the Respondent "seemed to contain the Country of origin and fibre content.[4]
61. The Respondent submits that there could have been no contravention of section 24(5)(a) of the CPA, with the Respondent having labelled the goods in accordance with the provisions of the CPA and the Country of origin being duly reflected therein.
62. Concerning the alleged contravention of section 24(5)(b) - Other prescribed information: fibre content, the Respondent states it is also alleged to have contravened section 24(5)(b) of the CPA, insofar as the goods allegedly do not contain labelling specifying the fibre content thereof. As has been evidenced above, the commercial documents which accompanied the goods contained the fibre content of the goods, specifying it as being 'silk' fabric. The Respondent

argues that the Applicant has admitted the same in paragraph 17.4 of the Replying Affidavit.

63. As these two allegations were in the founding papers and the only allegations levelled against the Respondent, the Respondent believes it has complied with the CPA. It says that the Applicant has now raised in its replying affidavit for the first time that the requisite labels do not contain care labelling.
64. The Applicant quoted section 24(5) and regulation 6(1)(a) and (b) of the CPA on pages 9 and 10 in the Founding Affidavit. Although regulation 6(1)(b) makes mention of both the fibre content and care labelling requirements, the Applicant only alleged in its Founding Affidavit that the goods "do not conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published

in the Gazette of 3 June 2000 in that the goods did not contain a labelling specifying the fibre content."

65. The Respondent argues that the Applicant should be barred from raising this issue during the proceedings. Nevertheless, in response to the allegation, the Respondent states that care labels are intended to be attached to finished products, providing information on how to clean and care for a finished garment. The Oxford Advanced

American Dictionary defines "care label" as "a label attached to the inside of a piece of clothing, giving instructions

about how it should be washed, and ironed". The Collins Dictionary defines a care label as "a label attached to a garment or fabric giving the manufacturer's instructions for its care and cleaning".

66. The Respondent argues that the Cambridge Dictionary defines a care label as: "a small piece of material attached to clothing or to something else made of cloth, with instructions on how to clean and care for it." Likewise, the MacMillan Dictionary defines a "care label" as "a label inside a piece of clothing that tells you how you should wash and dry it." The plain reading of these definitions shows that a care label is attached to a garment or item of clothing, both being finished products. This is evidenced by the fact that such a label sets out "the manufacturer's instructions", meaning that the fabric has undergone further processing.
67. This interpretation of the meaning of a care label aligns with the purpose of the CPA as articulated in section 3(1)(d) and (e) which state:

"The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by-

(a)...

(b)...

(c) ...

(d)protecting consumers from-

(i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

(ii) deceptive, misleading, unfair or fraudulent conduct;

(e)improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour."

68. It is common cause that the goods in question are unfinished goods which still need to undergo further manufacturing. The Respondent further argues that it operates a small business and outsources the further production of the garments to two "cut, make, trim" manufacturers. This is further evidence that the imported goods were

not finished products and would not, in any event, be made available to any South African consumer. As such, no consumer will be caring for, cleaning, washing, or ironing these unfinished products nor come into contact with the goods in their current form. The lack of care labelling is therefore not deceptive, misleading, unfair, unreasonable, or unjustified - in the current circumstances, the issue is completely irrelevant. If a care label aims to inform a consumer on how to care for the finished garment correctly, it would be nonsensical to attach a care label to an unfinished product. If affixed as the Applicant contends, the care label would have to be removed before the unfinished goods could be manufactured and then reattached to the finished items before they reached the consumer. What is contended by the Applicant makes no sense.

69. In addition, the front and reverse of the label are sewn on the garments during the manufacturing process. The labels state the origin of the fabric, washing instructions and that it is made in South Africa. This evidences the Respondent's intended further compliance with the CPA, its regulation and the obligation placed on the Respondent to inform consumers properly. It is further evidence that, had the goods been released to the Respondent for their intended manufacturing, by the point of sale of the finished garments to consumers, consumers would have been fully informed and protected, as intended, and required by the CPA and its regulations.

ANALYSIS

70. Section 3 of the CPA outlines that the purpose and aim of the Act is to "promote and advance the social and economic welfare of consumers in South Africa." Our courts have considered the CPA to be a "social justice piece of legislation", with a resolutely pro-consumer stance.[5] In addition, Section 2 provides that the Act must be interpreted purposively and in a way that expresses the purpose of the Act.[6] Where a provision is capable of more than one meaning, the Tribunal or a court must "prefer the meaning that best promotes the spirit and purposes of this Act' and (specifically) improves the realisation and enjoyment of consumer rights.[7]

71. In Naude and Eiselen's Commentary on the Consumer Protection Act, the following remarks are made regarding the purposive interpretation of the Act[8]:

"Although the purposes of the CPA permeate the entire Act, including the preamble and the long title, s 2(1) provides that effect must be given to the purposes which are set out in s 3 specifically. When looking for purpose, it is often necessary to look for the mischief that is sought to be remedied. [. . .] The starting point is the text, but the context will help find the meaning even if the text is seemingly clear and unambiguous".

72. From this passage, the aims of the CPA, as contained explicitly in section 3 of the CPA, must be considered when interpreting and applying the provisions of the CPA. In addition, when interpreting certain provisions of the CPA, one must consider the mischief or harm that is sought to be remedied within the specific context of the case.[9]
73. In the current circumstances, it is necessary to consider what specific consumer rights are applicable and what harm exists, if any, which would undermine or compromise those consumer rights. Section 24 and regulation 6 of the CPA need to be purposively interpreted considering the above two considerations.
74. Section 24 and Regulation 6 seek to protect consumers by promoting consumer awareness and providing product information. When interpreting how a trade description and care label ought to be applied, these rights must be borne in mind.
75. In addition, if section 24 seeks to improve consumer information and awareness by attaching a trade description and care labelling, the trade description and fibre content have already been applied to the goods. In the unlikely event that a consumer was to come into contact with the goods in their unfinished state, such a consumer would not be misled and would have all the requisite information available to make an informed decision.
76. The Tribunal must consider whether the CPA "care labelling" requirements include protecting consumers in respect of imported unprocessed fabric as soon as it lands on South African soil and before it is released by customs officials.
77. The Tribunal heard lengthy submissions from the Applicant on the application of clause 6.3 of the SANS 10011:2007-Care labelling of textile piece-goods, textile articles and clothing quality standard.¹⁰
78. These provisions relating to care labelling are essential to protect the handling of the goods before they can enter the South African market and are passed from one processor to the next. Failure to include these instructions on how to care for or handle the fabric could result in improper handling and caring for the goods. The result would be that the processors would not know what care labels to apply to the goods or apply improper labels to the goods. This, in our view, is the potential harm to consumers that the Legislature

intended to prevent in enacting section 24(5) of the CPA. In enacting the provisions of section 24(5) of the CPA, the Legislature did not express any intention to ban unlabelled goods but simply required that specified producers or importers must apply particular trade descriptions. In *Cool Ideas 1186 CC v Hubbard and Another*,^[10] the Constitutional Court held:

"[28] A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

- (a) that statutory provisions should always be interpreted purposively;
- (b) the relevant statutory provision must be properly contextualised; and
- (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)."^[11]

79. Concerning the provisions of regulation 6 of the CPA Regulations, in paragraph 38 of the above-cited case, the Constitutional Court stated that "a purposive approach to the interpretation of the regulation has to be adopted." Our view is that the purpose of section 24(5) and regulation 6(1)(b) is to help consumers make informed choices. It is not to make importers liable for the actions of exporters. Suppose exporters fail or neglect to apply correct labelling on importers' behalf. In that case, importers should be allowed to comply with the provisions of section 24(5) and regulation 6(1)(b) when the goods arrive on South African shores. Any other interpretation would result in the absurdity that importers would be held liable for the negligence or failure of exporters to apply proper trade descriptions. Therefore, in our view, the provisions of regulation 6 of the CPA Regulations must be interpreted to fulfil the purpose of ensuring that proper trade descriptions are applied before

goods are permitted to enter the South African market. These provisions cannot be interpreted to impose a ban on unlabelled goods,

which the Legislature did not express in the primary legislation.

80. The Tribunal finds that a trade description can be applied to the goods by allowing the Respondent access to the goods for purposes of applying the correct labelling to the goods before they are finally released by the Customs officials to the Importer and before the goods can reach any South African consumer.

81. In our view, in enacting section 24(5), the Legislature was not concerned with prohibiting the importation of unlabelled goods but with the labelling of unlabelled imported goods. Since the Importer can only know that imported goods are not labelled when they reach the South African shores, the "must" in section 24(5) and the provisions of regulation 6 can reasonably be said to apply when an importer becomes aware of the lack of the required labels and must be complied with before the goods are released to the Importer.
82. Any other interpretation would lead to the absurdity that, to avoid a finding of prohibited conduct, importers must travel to the exporter's premises and label the goods there or in the middle of the sea or mid-air to ensure that the goods do not land on South African seas or soil without proper labelling. This would be extremely absurd and could have never been the intention of the Legislature.

CONCLUSION

83. Consequently, the applicant has failed to discharge the onus borne by it that the Respondent committed prohibited conduct.

ORDER

84. The Tribunal makes the following order-

- 84.1. The application is dismissed;
- 84.2. and
- 84.3. There is no costs order.

Dated on 25 November 2022.

(signed)

Prof. K Moodaliyar Presiding member

Mr. A Potwana and Adv. C Sassman concurring.

[1] Cool Ideas 1186 CC v Hubbard and Another

[2014] ZACC 16.

[2] See para 17 .1 of the Applicant's Replying Affidavit at page 186.

[3] See para 9.12 of the Respondent's Answering Affidavit at page 98.

[4] See para 17.4 of the Applicant's Replying Affidavit at page 186, in reply to the Answering Affidavit paragraphs 9.9 to 9.15. of the Record at page 95.

[5] Imperial Group (Pty) Ltd t/a Cargo Motors Klerksdorp v Dipico and Others [2016] ZANHC 1 (unreported case no 1260/2015 (NCK) (1 April 2016)) para 24.

[6] Section 2(1) of the CPA.

[7] Section 4(3) of the CPA.

[8] Naude & Eiselen Commentary on the Consumer Protection Act
(2017) at pages 2-3.

[9] The purposive method was used in Imperial Group (Pty) Ltd t/a Cargo Motors Klerksdorp v
Dipico and Others

[2016] ZANCHC 1 (unreported case no 1260/2015 (NCK) (1 April 2016)) paras 24-26. 10
Government Notice No. 2410 of 2000, published in the Gazette of 30 June 2000.

[10]

[2014] ZACC 16.

[11] Emphasis added.

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