

**IN THE HIGH COURT OF
GAUTENG DIVISION,**



**SOUTH AFRICA
JOHANNESBURG**

CASE NO: 2023/106927

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
1 November 2023

In the matter between:

GEO EQUIP AFRICA (PTY) LTD

APPLICANT

And

GEOBRUGG SOUTHERN AFRICA (PTY) LTD

RESPONDENT

JUDGMENT

WRIGHT J

1. The applicant company imports and sells wire mesh. The respondent is a trade competitor. There is patent litigation between the two which is pending.

2. The respondent told at least one customer of the applicant that the applicant sold counterfeit wire mesh.
3. On 13 October 2023, the respondent undertook in writing to the applicant not to “*make further statements in relation to counterfeit goods to potential clients in South Africa.*” The letter stated that an amended undertaking would be sent to the applicant in due course.
4. The applicant seeks an urgent interdict.
5. It says that the matter is urgent as it needs to protect its name and standing in the market.
6. It is the applicant’s case that the defamation was made to the applicant and potential customers of the applicant but that the undertaking not to repeat the counterfeit allegation was given only to the applicant and that therefore, because no retraction has been made to the applicant’s customers, the applicant is prejudiced in the market.
7. In the answering affidavit, the respondent accuses the applicant of infringing the respondent’s overseas parent company’s registered trade mark, Blast On. Although the trade mark is not yet registered in South Africa, the holding company intends seeking registration as soon as possible.
8. There is no counter-application.
9. In the replying affidavit, the applicant undertakes to remove all reference on its website to Blast On and the applicant undertakes to remove certain images which the respondent says infringes its copyright.

10. In my view, the applicant is entitled, not only to a retraction, which it has, but also to an order that the respondents send a retraction to the persons to whom the counterfeit allegation was made.
11. In argument, Mr Bester SC for the respondent said that the undertaking, referred to by his client was overtaken by the launching of the application. This excuse is very weak. Nothing has stopped the respondent from giving what it said it would give.
12. On the evidence, the only inference to be drawn is that when the respondent sent the counterfeit statement to at least one customer or potential customer of the applicant the motive was to decrease the applicant's chances of being awarded a contract or contracts.
13. The applicant is entitled to a temporary order, operating with immediate effect, costs reserved, to the effect that the statements be withdrawn and there be no related interference with its business.

ORDER

1. X as amended. -

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 31 October 2023

DELIVERED : 31 October 2023

APPEARANCES :

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