PLEASE CALL ME – THE CALL THAT CAME TOO LATE

By Janine Hollesen, Director

LEGAL BRIEF
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A matter which has sparked much debate over the years is that of the Vodacom Please Call me case, in which former Vodacom employee Nkosana Makate sued the mobile telecommunications company for remuneration in respect of the Please Call Me concept.

INTRODUCTION

The essential understanding to grasp in examining this case is that due to the fact that there is no protection in respect of ideas, it is always important to ensure that if an individual does conceive of a concept (which cannot be protected by means of intellectual property rights), that the proper agreements be in place which regulate the arrangement, the use of the concept and possible remuneration, in order to avoid costly court proceedings.

The case was concerned with the following –

> A former employee of Vodacom alleged that he came up with the Please Call Me idea while in Vodacom's employ;

> He claimed that a verbal agreement had come into being between himself and a director of Vodacom, who agreed to pay the employee an amount to be negotiated. This amount was to represent a share of the revenue generated by the product which would be developed from the concept;

> The employee wanted the court to confirm by way of declaratory order that the oral agreement was entered into between the parties, and for an order directing Vodacom to commence bona fide negotiations to determine a reasonable remuneration payable for the use of the Please Call Me product;

> Vodacom denied that a revenue-sharing agreement with the employee had come into existence and further denied that the Vodacom director had authority to enter into such an agreement.

"CALL REJECTED"

The court rejected the claim on the basis that the claim had prescribed. Two-and-a-half years after the product was developed and launched, the employee terminated his employment with Vodacom - and only four years later did he start to pursue his claim. It was decided the former employee had taken too long to approach the court.

The claim was also refused on the basis that the employee could not show that the director who had concluded the verbal agreement with him had the authority to do so. The employee did not prove that Vodacom had full knowledge of the facts - including details of the negotiations and the agreement between the former employee and the Vodacom director - and that with such knowledge, Vodacom adopted the director's unauthorised act, i.e. the conclusion of the agreement.

CONCLUSION

The court ruled that even though the Vodacom board had authorised the launch of the product, there was no proof that it was aware of the detail of the negotiations, including the director's agreement to pay for the idea and the promise to negotiate the amount of the payment.

It is therefore essential to ensure that prior to disclosing an idea or concept to a third party, that it first be ascertained whether it could be the subject matter of any registered rights; or at least enter into the necessary contractual arrangements to ensure the above scenario is avoided.

ABOUT THE AUTHOR

JANINE HOLLESEN

Title: Director
Office: Stellenbosch
Direct line: +27 (0)21 809 6011
Email: jhollesen@werksmans.com

Janine Hollesen is a member of the firm's Intellectual Property Practice and became a director of Werksmans Attorneys following its merger with Jan S. de Villiers in 2009. Prior to this, she had been a partner at Jan S. de Villiers for nine years.

Janine specialises in all aspects of Intellectual Property (IP) law, including trade mark clearance searches and registration; the protection and enforcement of IP rights; IP litigation; unlawful competition; counterfeit goods; and domain name disputes. She also advises on commercial matters, including securitisation and due diligence investigations, and the protection of plant breeders' rights, including the commercialisation of new varieties and related litigation.

Her expertise extends to advising clients in relation to copyright law and matters concerned with advertising, including dealing with complaints before the Advertising Standards Authority.

She is a fellow of the South African Institute of Intellectual Property Law (SAIIPL) and a member of the International Trade Mark Association (INTA) and the Plant Breeders' Rights Committee.

Janine holds BA LLB and LLM degrees from the University of Stellenbosch and the University of South Africa, respectively.

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