



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED

*Swatch AG (Swatch SA) v Apple Inc. (1320/2018) [2021] ZASCA 11*

**From:** The Registrar, Supreme Court of Appeal

**Date:** 29 January 2021

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

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Today the Supreme Court of Appeal (SCA) handed down the judgment in an appeal against the order of the Gauteng Division of the High Court, Pretoria, which dismissed the opposition to the registration of a trade mark. The appeal was dismissed.

Apple applied to register its IWATCH trade mark. Swatch opposed these applications. Swatch contended that the IWATCH and SWATCH marks are confusingly similar, and thus that the IWATCH mark was likely to deceive or cause confusion. The high court dismissed the opposition with cost. The central issue before the SCA was whether, upon a proper comparison, the two marks are deceptively or confusingly similar.

The marks that required comparison were 'SWATCH' and 'IWATCH'. Swatch contended that there were obvious similarities, as both marks consisted of only letters and they employ no logos or other distinguishing matter; both have a common element of WATCH, preceded by a single-letter prefix, one with an S and the other with an I, which does little to provide visual differentiation. Furthermore, it was submitted that the marks sound similar when spoken and that neither SWATCH nor IWATCH have any meaning when used in relation to watches.

In considering the question whether the marks are confusingly or deceptively similar, the court considered the visual, aural and conceptual similarities of the marks; and the overall impression given by the marks, bearing in mind their distinctive and dominant components. The court also considered how the marks were perceived by the average consumer, in the relevant market, who is reasonably well-informed and observant.

As to the visual comparison of the marks, the court held that both marks make use of the common element 'watch', which makes for some visual similarity. However the prefix 'I' in IWATCH and 'S' in SWATCH provided visual differentiation.. As for the aural comparison, the marks sound very different. The conceptual reference to the word 'watch' was not a salient point of identity. The word 'watch' is a descriptive word. It is not the purpose of the law of trade marks to secure a monopoly in respect of commonplace words. There is good reason to avoid attaching exclusive rights to common descriptors.

In coming to its conclusion, the court considered that the consumers of the watches of Swatch and Apple are likely to be more affluent and more concerned with the precise brand of watch that they require. Consumers of this kind were found to be less likely to be deceived or confused by the limited similarities between the marks.

The court held that upon a visual, aural and conceptual comparison, the marks did not yield similarities of sufficient significance to make the marks confusingly or deceptively similar.

In the result, the appeal was dismissed with costs.

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