

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case No. 12156/05

In the matter between:

**TREATMENT ACTION CAMPAIGN
SOUTH AFRICAN MEDICAL ASSOCIATION**

**First Applicant
Second Applicant**

and

| | |
|---|----------------------------|
| MATTHIAS RATH | First Respondent |
| DR RATH HEALTH FOUNDATION AFRICA | Second Respondent |
| SAM MHLONGO | Third Respondent |
| DAVID RASNICK | Fourth Respondent |
| ALEXANDRA NIEDWIECKI | Fifth Respondent |
| ANTHONY BRINK | Sixth Respondent |
| TREATMENT INFORMATION GROUP | Seventh Respondent |
| GOVERNMENT OF THE RSA | Eighth Respondent |
| DIRECTOR-GENERAL OF HEALTH | Ninth Respondent |
| CHAIRPERSON, MEDICINES CONTROL COUNCIL | Tenth Respondent |
| REGISTRAR OF MEDICINES | Eleventh Respondent |
| MEC FOR HEALTH WESTERN CAPE | Twelfth Respondent |

SIXTH RESPONDENT'S HEADS OF ARGUMENT

1.

I, Anthony Brink, the sixth respondent in this application, now appear in these proceedings in person, and shall summarize my argument in these heads in the first person accordingly.

2.

It is not disputed, and is therefore common cause, that the group I lead, the seventh respondent, is a voluntary association. Since the applicants do not claim, and have not established, that the seventh respondent has title to sue and be sued in its own name, the applicants' purported joinder of my associates in my group by citing my group by its collective name in this application was incompetent, and they are not properly before this court accordingly.

Sixth and seventh respondents' answering affidavit: paragraph 3

3.

The only relief in this application claimed specifically against me and the seventh respondent is for an order interdicting us (along with the first to fifth respondents) from 'publishing false or misleading advertisements concerning the products Vitacor Plus, Epican Forte, Lysin C, Drink Mix and Vitacell', and costs.

Notice of Motion, paragraphs 4 and (renumbered) 14

4.

Since the applicants do not allege in their papers that I or anyone in my group, the seventh respondent, have ever advertised these products at all, let alone in a false and misleading manner, or that I/we intend doing so, they have not established a cause of action against us for the relief claimed.

5.

It is not disputed, and is therefore common cause, that the second respondent is a non-profit organization, incorporated under Section 21 of the Companies Act. My statement in my answering affidavit that 'while working for the second respondent I was not involved in the micronutrient programme that it initiated

in poor African communities, which lies at the heart of this case' was not contradicted by the applicants in reply, and was tacitly admitted accordingly. Nor did the applicants allege that any other members of my group, the seventh respondent, were so involved.

First respondent's answering affidavit, paragraph 248

Sixth and seventh respondents' answering affidavit: paragraph 13

6.

Since the applicants have not alleged that I or any other members of my group were ever involved in 'distributing and/or selling' the above-mentioned products as an 'agent' of the first and second respondents (per the language of the Notice of Motion), or that I/we intend doing so, no claim lies against me or other members of the seventh respondent for an interdict in this regard.

Notice of Motion, paragraph 2

7.

On these grounds the application against me, the sixth respondent, and the members of my group, the seventh respondent, falls to be dismissed. I make no claim for costs.

Dated at Cape Town on this 4th day of March 2008

ANTHONY BRINK
SIXTH RESPONDENT

To: The Registrar
High Court
Cape Town

And to: The Legal Resources Centre
Attorneys for the 1st and 2nd applicants
Greenmarket Place
54 Shortmarket Street
Cape Town

And to: Qunta Incorporated
Attorneys for the 1st to 5th respondents
8th Floor, SA Reserve Bank Building
60 St Georges Mall
Cape Town

And to: The State Attorney
Attorney for the 8th to 12th respondents
4th Floor, Liberty Life Centre
22 Long Street
Cape Town
(Ref: 3265/05/P4 – Ms G Behardien)