

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. 35986/2006

In the matter between

ROCHE PRODUCTS

and

THE COMMISSIONER FOR THE SOUTH
AFRICAN REVENUE SERVICE

APPLICANT

RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
SUPPRESSED	
DATE	SIGNATURE

JUDGMENT

GOODEY AJ:

1.

INTRODUCTION:

- 1.1 This is an appeal in terms of Section 47(9)(e) of the Customs and Excise Act No 91 of 1964 ("the Act") against a tariff determination by the Commissioner that Zam-Buk

is a preparation for the care of the skin as intended in Tariff Heading 33.04 in Part 1 of Schedule No 1 to the Act.

- 1.2 The Applicant contends that Zum-Buk is a medicament as intended in Tariff Heading 30.04. Respondent obviously deny same.

2.

GENERAL:

- 2.1 I heard full argument on behalf of both parties.
- 2.2 I am indebted to counsel for the comprehensive heads of argument.
- 2.3 Dr Butkow testified on behalf of the Applicant's case.
- 2.4 Dr Muntfingh filed an affidavit on behalf of the Respondent.
- 2.5 Dr Duvenhage also filed an affidavit. It should be mentioned that Dr Duvenhage *inter alia* says that Zam-Buk will "*keep the skin moist and in this way allow the skin to heal itself more rapidly.*" - this should be further explained by experts or in any event, it calls for further explanation. This has obviously driven the Applicant to

contend that Dr Duvenhage admits that Zam-Buk has therapeutic effect - is this an admission that it is a medicament?

2.6 In passing it should be mentioned that the Applicant contends in its replying affidavit that if the Tariff Heading of 3004.90 is not appropriate, then Tariff Heading 3004.99 will be appropriate.

2.7 Apart from the aforesaid, it should also be pointed out that it is the case of the Respondent that the Applicant itself has never carried out any comprehensive tests as far as Zam-Buk is concerned.

2.8 I was initially tempted to follow a robust approach, but came to the conclusion that justice will not be properly served if the matter is not referred to trial.

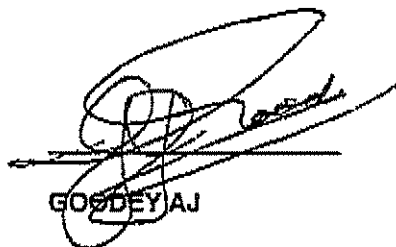
3.

Therefore I make the following order:

1. The application is referred to trial.
2. The notice of motion shall stand as a simple summons.
3. The notice of intention to oppose shall stand as a notice of intention to

defend.

4. The Applicant shall deliver a declaration within twenty days of this order.
5. Thereafter the rules relating to actions shall apply.
6. The costs to date shall be reserved for determination by the Trial Court.

A handwritten signature in black ink, appearing to be "Godfrey AJ", written over a horizontal line. The signature is stylized and somewhat illegible.

GODFREY AJ

2 April 2008