

www.citroen.co.za

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Admitted:-

- CITROËN is very well known in relation to motor vehicles.
- CITROËN is a determinative and well known designation of source for the Complainant's goods and services.
- CITROËN is registered as a trade mark, and was first registered in South Africa in 1953.

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Admitted:-

- The website is operated solely in tribute to Citroën cars.
- No money is made from the website.
- It assists Registrant and other Citroën enthusiasts to trade Citroën cars. New cars are not sold on the website and no other make of car is mentioned.
- The Registrant does not criticise Complainant's business.

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Complainant submits:-

- a) intentional blocking;
- b) unfairly disrupting;
- c) preventing exercise of rights;
- d) Leads to belief that domain is registered to, operated or authorised by, or otherwise connected with the Complainant.

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Registrant submits:-

- At the time, Complainant was not operating in South Africa.
- He thought Complainant not trading in South Africa for 23 years, and did not intend returning to South Africa.
- Obvious choice for a tribute to Citroën cars was <citroen.co.za>.
- Could have registered <ilovecitroen.co.za>, but honestly believed that Complainant did not want to exercise its rights in South Africa.
- Believed the best domain to pay tribute was <citroen.co.za>.

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“The question that arises is why the Appellant insists on conducting its business in the manner described. Why can it not, through the use of a few words, convey the true facts to the public?

.... from this, one can only deduce that the Appellant wishes to obtain an unfair advantage from the use of the trade mark and does not wish to inform the public of the true facts concerning the origin of the windscreens. In other words, the argument that the advertisements “consist wholly of descriptive, truthful commercial speech” is without factual foundation.”

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When the mark of another is appropriated, it must be in a manner that cannot leave scope for doubt but that it is wholly descriptive and truthful. When that happens, jurisprudence deems the use acceptable, otherwise not.

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Being an avid Citroën supporter, at no stage did the Registrant enquire whether his adoption of the mark was acceptable. It is tempting to draw the inference that anticipated rejection prevented the enquiry.

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