



# Honey & Blanckenberg

Established 1893



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# **SUBSTANTIVE EXAMINATION OF SPECIAL AND NON-TRADITIONAL MARKS - LORRAINE TAKAENDESA**



# NON-TRADITIONAL MARKS

- series
- slogans
- 3 dimensional marks
- colour
- pattern
- sound
- smell
- motion marks



# ELEMENTS OF A MARK

- graphical representation
- ability to distinguish



## SERIES MARKS

- a series mark consists of more than one mark in a single application



For a series to be acceptable the marks should:

- look the same
- sound the same
- mean the same

Minor differences.



*strawberry lips*

*strawberry lips*

*strawberry lips*



*madras plain*

*madras mild*

*madras hot*





*Jack and Jones*  
*Jack n' Jones*  
*Jack & Jones*



# BATTLING FOR PEOPLE BATTLING 4 PEOPLE



# CHALLENGES WITH SERIES MARKS

- applicants don't know what constitutes a series mark



## SLOGAN MARKS

- a phrase, a tagline, a catchy quote, a clever saying, a motto



- **JUST DO IT**
- **FINGER LICKIN' GOOD**
- **IMPOSSIBLE IS NOTHING**
- **DO GREAT THINGS**



- **JUST DO IT - NIKE**
- **FINGER LICKIN' GOOD - KFC**
- **IMPOSSIBLE IS NOTHING - ADDIDAS**
- **DO GREAT THINGS – OLD MUTUAL**



# CHALLENGES WITH SLOGAN MARKS

- direct reference to the characteristics of the goods or service
  - void of distinctiveness
- =
- refusal for non-distinctiveness
  - disclaimers



# EXCELLENCE THROUGH QUALITY

in class 36

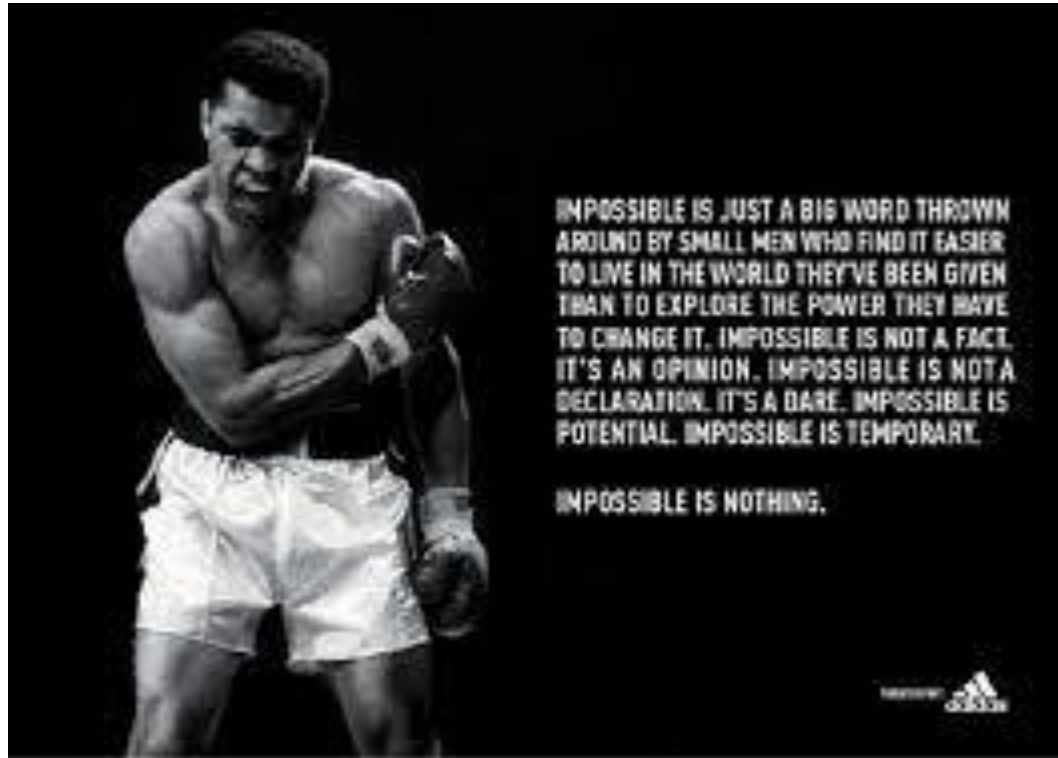




# IMPOSSIBLE IS NOTHING

in class 25





IMPOSSIBLE IS JUST A BIG WORD THROWN  
AROUND BY SMALL MEN WHO FIND IT EASIER  
TO LIVE IN THE WORLD THEY'VE BEEN GIVEN  
THAN TO EXPLORE THE POWER THEY HAVE  
TO CHANGE IT. IMPOSSIBLE IS NOT A FACT.  
IT'S AN OPINION. IMPOSSIBLE IS NOT A  
DECLARATION. IT'S A DARE. IMPOSSIBLE IS  
POTENTIAL. IMPOSSIBLE IS TEMPORARY.

IMPOSSIBLE IS NOTHING.



# FLY AWAY HOME

In class 36: real estate affairs

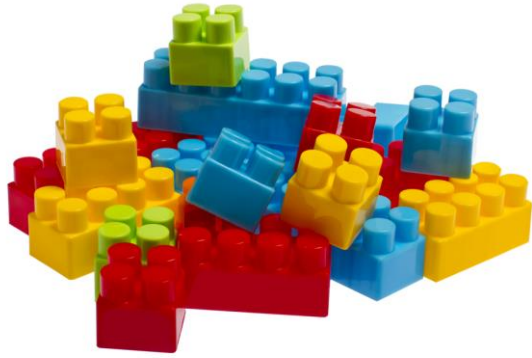


## THREE DIMENSIONAL MARKS

a sign with 3-dimensional shape that has length, width and height and enables consumers to distinguish the different sources of goods or services.

- a 3-dimensional mark may include the following-
- shape of goods
  - shape of the packaging or container of goods







## CHALLENGES WITH 3-D MARKS

- tend to be non-distinctive
- shape of the goods is generally a functional or ornamental feature of the goods, and less as a source indicator
- shape of container may be common



## COLOUR *PER SE* TRADE MARKS

- this is a mark which comprises colour which is not spatially delimited

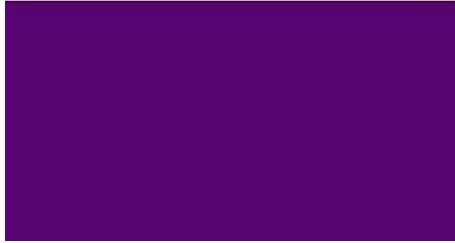






in respect of gas tanks





# CHALLENGES WITH COLOUR MARKS

- single colour marks are often perceived as non-distinctive
- a multi-colour mark is more likely to be distinctive in the colours used and ratio of colours
- non-distinctive colours
  - descriptive colours
  - generic colours
  - functional colours



## PATTERN MARKS

- consist exclusively of a set of elements that are repeated regularly applied on goods or packaging or containers





# CHALLENGES WITH PATTERN MARKS

- non-distinctive
- ornamental and not an indicator of source



# SOUND MARKS

a distinctive sound, jingle or musical composition used to distinguish a product or service



alamy

royalty free  
www.alamy.com



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# CHALLENGES WITH SOUND MARKS

- graphical representation
- inherently distinctive
- descriptive sounds not registrable
- generic sounds not registrable





# SMELL MARKS

make use of a particular smell as a sign for indicating source of goods or services.



- Verizon trademarked a ‘Flowery Musk Scent’ for its stores.
- Grendene, a Brazilian Footwear company, trademarked their bubble gum-scented jelly sandals.
- Unicorn Products Limited, trademarked the smell of beer for their darts



## CHALLENGES WITH SMELL MARKS

- graphic representation
- description in words
- difficult to maintain integrity of the sample
- publication for opposition
- distinctiveness



## MOTION MARKS

a trade mark consisting of, or extending to, a movement or a change in the position of the elements of the mark.



# SALT BAE





**NOKIA**  
Connecting People



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# CHALLENGES WITH MOTION MARKS

- graphic representation
- failure to function as source identifiers
- functional



# ARIPO AND NON-TRADITIONAL MARKS

- the Banjul Protocol does not provide for registration of non-traditional marks





THANK YOU

