

Pritt comes unglued in ad case

The Advertising Standards Authority (ASA) has said Henkel AG, manufacturer of Pritt, has no exclusive rights in South Africa to the red of its glue stick and the advertising associated with the product.



It's OK to be red, the ASA said.

The authority was ruling in the dispute with Trefoil Manufacturing, a South African company that was deemed to be contravening the ASA Code by distributing a glue stick that is also primarily red in colour and bearing the Amos trademark

"Henkel had alleged that as a result of its extensive use of the colour red in relation to the Pritt product, the colour red has acquired an advertising goodwill vesting in Henkel. By the distribution of the red Amos glue stick product in South Africa, Trefoil was exploiting Henkel's advertising goodwill in the colour red," reports Carl van Rooyen, partner at Spoor & Fisher, an intellectual property law firm. "A further leg of Henkel's complaint was that the red AMOS glue stick is an imitation of the red Pritt glue stick."

No colour bar

The ASA, in recent years, has ruled that there is no advertising goodwill in:

- The colour blue of Parmalat's yoghurt;
- The colour orange used by Neotel; and
- The colour yellow (with green accents) of the King Korn product.

"From the rulings of the ASA, it is clear that it is only in very exceptional circumstances will an advertiser be able to convince the ASA that its adoption and use of a single colour is a creative advertising concept or idea that will result in advertising goodwill that is protectable," adds Van Rooyen.

"The rulings of the ASA are in line with the so-called 'colour depletion doctrine' in trademark law. In short, as there are only a limited number of colours available, trademark laws around the world do not allow parties to monopolise single colours, for

obvious reasons. It therefore comes as no surprise that the ASA came to the conclusion that there is no evidence that Henkel's use of the colour red has resulted in the colour red becoming their signature of the product.

"This ASA ruling is in line and consistent with previous ASA rulings on single colours and once again confirms that it will be difficult for any advertiser to use the ASA Code to try and monopolise single colours," Van Rooyen concludes.

For more, visit: <https://www.bizcommunity.com>