



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Tellytrack v Marshalls World of Sport (Pty) Ltd & others (971/2018) [2019] ZASCA 153.

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order of the KwaZulu-Natal Division of the High Court, Durban. The appeal was lodged by Tellytrack, a partnership between Phumelela Gaming and Leisure Limited, Gold Circle (Pty) Ltd and Kenilworth Racing (Pty) Ltd. In the court below, as in the SCA, Tellytrack claimed that Marshalls World of Sport (Pty) Ltd and six other respondents, who all run bookmakers businesses, infringed Tellytrack's copyright in cinematograph films by allowing the viewing by the public at their places of business live national and international horse racing events, on Tellytrack's DSTV channel 239.

In denying infringement of copyright, the respondents submitted that what was being shown on the Tellytrack channel was not a cinematograph film, but a broadcast. The respondents further contended that the images shown on channel 239 were not fixated or stored, *inter alia*, on film or any other material of data, and therefore did not satisfy the definition of a cinematograph film in terms of s 1 of the Copyright Act 98 of 1978. They contended that what Tellytrack was displaying on its channel, was a live broadcast, which had not been stored.

In determining whether what Tellytrack was displaying on its channel was a cinematograph film, the court considered the work done by Tellytrack's employees before the live races were viewed by the public on channel 239. It found that the images from the race events were recorded on more than one occasion to allow for the adding of enhancements like audio and graphics.

The court found that what the bookmakers allowed the public to view at its business premises on the Tellytrack channel were:

'[A] sequence of images seen as a moving picture constituting in the main horse racing events. Those images and others, including those of studio interviews and the overlay of all the items imposed by way of the computer program, have indisputably been reduced to material form by way of the recordings on the aforesaid occasions. First, in relation to domestic races, two recordings were made at the OB van, second at the Tellytrack control room. In respect of international races, the recording is made of the complete product, including enhancements, at the Tellytrack control room. What is seen on channel 239 is what has already been recorded and stored at the OB van and the Tellytrack control room. At the time that a race event is seen on channel 239 is has already been recorded and stored. . . .'

The SCA found that there had been an infringement of copyright and the appeal was cosequently upheld with costs, including the costs consequent upon the employment of two counsel and the order of the court below was set and substituted with an appropriate order.