



Supreme Court of New Zealand

11 December 2007

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Austin, Nichols & Co Inc v Stichting Lodestar
(SC 21/2007) [2007] NZSC 103**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The principal issue in this appeal was the approach that the High Court should take on an appeal against a decision of the Commissioner of Trade Marks under s 27(6) of the Trade Marks Act 1953. The Court of Appeal judgment suggested that, where a decision turns on a value judgment open to the Commissioner, the High Court ought not to embark on a reconsideration of the issue without considering, and giving weight to, the Commissioner's conclusion. The Supreme Court has held unanimously that this approach is not correct. On hearing an appeal under s 27(6), as with all general appeals, the appellate court must come to its own view on the merits of the case. The weight that the appellate court gives to the lower authority's reasoning is a matter for its own judgment.

If the Court of Appeal had overturned the decision of the High Court simply because it had not given sufficient weight or deference to the views of the Assistant Commissioner then the appeal would have been allowed. However, the Court of Appeal also made a substantive assessment of the facts and came to its own conclusion on the merits. For this reason, the appeal was dismissed.

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