



**Smit & Van Wyk**  
Patent, Trade Mark and Copyright Attorneys

Your ref: TDM/CKU/LT5594

Our ref: E Jonker / G4001-09

6 January 2025

To: **ADAMS & ADAMS**

Attention: Mr T Manentsa

**WITHOUT PREJUDICE**

Dear Sir,

**RE: OASIS WATER (PTY) LTD / FORMER FRANCHISEES – SUPREME COURT OF APPEAL AND VARIOUS HIGH COURT ACTIONS**

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We refer to the abovementioned matters pertaining to your client and various former Oasis Water franchisees. For ease of reference, a list of the case numbers to which this correspondence relates appear in **Annexure “A”**.

We hold instructions to advise as follows:

1. Subsequent to the three urgent court applications for interdictory relief, your client issued 9 actions against former franchisees. In all of the court matters, the Oasis Water marketing fund was one of the primary issues in dispute.
2. It was drawn to your attention that our clients issued *Subpoenas Duces Tecum* in each of the actions to obtain the bank statements in respect of the Oasis Water Advertising Levy bank account (Standard Bank Account 370240367). Standard Bank is in the process of complying with the subpoenas in respect of each of the matters respectively, and we have furnished you with electronic copies of the bank statements as received from Standard Bank in response to the subpoenas under case number **2023/114984** and **5955/2023**.
3. On 01 December 2022, your offices confirmed on behalf of your client, in writing that:  
***Regulation 2(3)(m)(vii): Payments received from Franchisees for royalties and marketing amounts were, for the sake of convenience for Franchisees, deposited into a single bank account, whereafter the marketing contributions received, were transferred and deposited into a separate marketing fund bank account, which has formed part of the annual audit of the Franchisor.***

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4. Upon perusal of the bank statements, the following was noted:
- 4.1. Not all marketing fund monies were deposited and/or transferred into the designated marketing fund bank account;
  - 4.2. The bank account was not used as the primary transactional bank account in respect of the marketing fund;
  - 4.3. It is obvious that the bank account was merely used as a shell account for limited transactions and/or certain selected lump sum transfers;
  - 4.4. No marketing fund monies were received or transferred for substantial periods of time, for example, for the periods of: 20 July 2018 – 19 October 2018; 20 November 2018 – 19 March 2019; 20 May 2019 – 19 September 2019; 21 October 2019 – 18 January 2020; 20 June 2020 – 19 January 2021; 20 Aug 2021 – 19 October 2021; 20 December 2021 – 19 February 2022;
  - 4.5. Your client made financial loans to its associated and/or holding companies from the marketing fund, for example, LOAN CALL VC OASIS (statement 54); OW Adv to VC CALL LOAN Acc (statement 64); OW Loan to OWH (statement 108);
  - 4.6. Your client paid general Oasis Water salaries from the marketing fund, for example, OW salaries (statement 77); OW Salaries Jul 22 (statement 103); OW Salaries Sep 22 (statement 105);
  - 4.7. Your client provided financial assistance to company owned stores, alternatively stores in which persons related to the Franchisor entity has/had an interest, from the marketing fund, for example, payment to SSB Creditor OW (statement 51); payment to Creditors for Tech Department (statement 51); OW Creditors OWH (statement 103);
  - 4.8. Your client paid expenses (including suppliers) unrelated to the marketing fund, out of the marketing fund, for example, payment to Puritech (statement 51); payment to Creditors for Tech Department (statement 51); OW Creditors OWH (statement 103).
5. From the above, it is clear that your client has flagrantly failed to comply with the Consumer Protection Act (“CPA”) Regulation 2(3)(m), in particular in respect of, *inter alia*, the following:
- 5.1. Your client has not received **all** marketing monies in a separate bank account;
  - 5.2. Your client has not used the marketing fund monies **only for purposes of the fund**;
  - 5.3. Your client’s associated companies and/or businesses enjoyed **direct or indirect benefits**, which were not afforded to independent franchisees;
  - 5.4. The “financial summaries” that your client (as Franchisor) provided to its franchisees did not fairly reflect the receipts and expenses of the marketing fund for the relevant periods.

6. It is furthermore noted that none of the CPA prohibited transactions (listed in paragraph 4 above) were disclosed and/or specified in terms of your client's alleged "*marketing fund management accounts*" and/or other "*user friendly format*" summaries and/or or the auditor certificates as previously provided to our clients.
7. It can only be inferred that your client attempted, in a deliberate and wilful manner, to conceal the CPA prohibited transactions. This inference is bolstered by your client's failure to provide the bank statements of the marketing fund bank account during discovery, which necessitated the subpoenas.
8. In the affidavits filed on behalf of your client in the applications now pending in the Supreme Court of Appeal, and deposed to by Mr Du Preez, the following statements (amongst others) were made:
  - 8.1. "*The Franchisor never benefitted from any money received in respect of the marketing fund.*"
  - 8.2. "*The marketing fund contributions were never used and will never be used to supplement royalties*".
  - 8.3. "*It is indeed so that "not one cent [of the marketing fund money] was misspent*".
  - 8.4. "*No transgression of any statutory enactment took place*".
  - 8.5. "*The claim of some sort of transgression of the CPA regulations and franchise agreements is without any merit*".
  - 8.6. "*The Applicant [Franchisor] created so called pie-charts to give a visual representation of the financial status... The pie charts included all of the information required by the CPA*".
9. The above statements are irreconcilable with the contents of the marketing fund bank statements and the veracity or duplicity thereof will be revealed at trial.
10. In view of the above, your client is invited to withdraw each of the actions and applications and to tender our clients' costs by no later than **14 January 2025**.
11. Our client will not hesitate to rely on the necessary procedures to bring your client's unlawful conduct concerning the marketing fund (including the irreconcilability of Mr Du Preez's statements, and the "financial information" provided by the Franchisor, with the bank statements) to the attention of the relevant courts.
12. Your attention is drawn to Rule 34(11) of the Uniform Rules of Court.
13. Our clients' rights remain reserved.

Yours faithfully,

**SMIT & VAN WYK INC.**



**E JONKER**

*Attached – Annexure “A” (page 5)*

**Annexure “A”**

|                                | <b>CASE NO</b> | <b>PARTIES</b>  |
|--------------------------------|----------------|---|
| <b>SUPREME COURT OF APPEAL</b> | 988/23         | VAN SCHALKWYK WATER CC & ANOTHER v OASIS WATER (PTY) LTD  |
| <b>SUPREME COURT OF APPEAL</b> | 989/23         | VAN BERG WATER (PTY) LTD t/a OASIS WATER LYNNWOOD & 04 OTHERS v OASIS WATER (PTY) LTD & ANOTHER |
| <b>SUPREME COURT OF APPEAL</b> | 1120/23        | OASIS WATER (PTY) LTD & ANOTHER v WYNAND ALBERTUS BESTER & ANOTHER                              |

|                                    | <b>CASE NO</b> | <b>PARTIES</b>  |
|------------------------------------|----------------|---|
| <b>HIGH COURT CAPE TOWN</b>        | 19728/2023     | OASIS WATER (PTY) LTD v VERISWIFT HEALTH CC & 1 OTHER                       |
| <b>HIGH COURT BLOEMFONTEIN</b>     | 5955/2023      | OASIS WATER (PTY) LTD v VAALORANJE (PTY) LTD                                |
| <b>HIGH COURT MAHIKENG</b>         | 2851/2023      | OASIS WATER (PTY) LTD v WA BESTER & 1 OTHER                                 |
| <b>HIGH COURT PIETERMARITZBURG</b> | 16656/2023     | OASIS WATER (PTY) LTD v VAN ZUYDAM & 1 OTHER                                |
| <b>HIGH COURT MBOMBELA</b>         | 5126/2023      | OASIS WATER (PTY) LTD v GLENCOE GREEN (PTY) LTD & 2 OTHERS                  |
| <b>HIGH COURT JOHANNESBURG</b>     | 2023/114984    | OASIS WATER (PTY) LTD v FONTANA DI PUREZZA (PTY) LTD (MAYFAIR) & 1 OTHER    |
| <b>HIGH COURT JOHANNESBURG</b>     | 2023/114927    | OASIS WATER (PTY) LTD v FONTANA DI PUREZZA (PTY) LTD (NORTHCLIFF) & 1 OTHER |
| <b>HIGH COURT CAPE TOWN</b>        | 20369/2023     | OASIS WATER (PTY) LTD v PRICE POINT CC (TABLEVIEW) & 1 OTHER                |
| <b>HIGH COURT CAPE TOWN</b>        | 20371/2023     | OASIS WATER (PTY) LTD v PRICE POINT CC (FISHHOEK) & 1 OTHER                 |