

# CORONAVIRUS TRADEMARKS IN SOUTH AFRICA

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The month of March has seen a rush of new trademarks being applied for at the Companies and Intellectual Property Commission (“**CIPC**”). This has become the case in other jurisdictions around the world as well, with people trying to profit off the pandemic by registering these trademarks in the pharmaceutical category. In the United States, more than a dozen applications were received by the United States Patent and Trademark Office in an attempt to file for registration of the words “COVID” or “coronavirus”. These attempts to exploit a pandemic which has taken thousands of lives globally raises ethical and moral questions.

Those that have filed for these trademarks will inevitably face challenges in getting them registered. In South Africa, trademarks can only be registered if they are not offensive, contrary to the law or good morals, or deceptive by nature or way of use. The coronavirus pandemic has, unsurprisingly, received negative reception from businesses, companies and individuals worldwide. The pandemic has affected billions of people, causing unemployment, poverty, ill health and death, perpetuating the spread of fear and panic.

While, South African trademark law does not specifically refer to the morality of trademarks, but the Trade Mark Act<sup>[1]</sup> uses terms such as “offensive” and “*contra bonos mores*”. There is no clear and concise definition given to the word “offensive”, however, a discretion is granted to the registrar to accept or refuse registration of marks on those grounds.

It is even more unlikely that the CIPC would register the trademarks in the category of pharmaceutical goods, as these would be deceptive and misleading to the public. There is currently no cure or vaccine available for the coronavirus, and manufacturers attempting to register such trademarks will not be able to prove that their product will kill the virus.

Furthermore, for a trademark to be registered, it has to have a certain level of distinctiveness which will set it apart from other marks. Although the words “COVID” and “coronavirus” are descriptive, it is certainly not distinctive, and therefore may not be registrable.

If you intend to apply for the registration of a trademark relating to coronavirus it is unlikely that the registration would not be accepted. If you have a question about the registration of your trademarks, contact us for more good, clear, precise advice.

