



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 22692/2024

In the matter between:

CHRYSTAL SPRING CONSUMER

FIRST APPLICANT

DIVISION LIMITED

GOOD HEALTH PRODUCTS (PTY) LTD

SECOND APPLICANT

and

SALT OF THE EARTH PRODUCTS

RESPONDENT

(PTY) LTD

Neutral citation: *Chrystal Spring Consumer Division Ltd and Another v Salt of the Earth Products (Pty) Ltd* (Case no: 22692/2024) [2025]
ZAWCHC ... (15 October 2025)

Coram: NUKU J

Heard: 13 August 2025

Delivered: 15 October 2025

Summary: Intellectual Property – Infringement of the right acquired by registration of a trademark - requirements of section 34(1)(a) of the Trade Marks Act, 193 of 1994, in respect of identical marks – an applicant is not required to prove that the use of an identical mark is likely to cause deception or confusion.

Saving of vested rights in terms of section 36 – a party relying thereon to prove, on a balance of probabilities, that they have used the trademark in question in good faith and continuously prior to the registration of the trademark concerned or the first use by the party enforcing its right—whichever occurs first.

Partial expungement of the registration of a trademark in terms of section 27 – a party seeking such relief to establish its entitlement to the relief.

ORDER

- 1 The respondent is interdicted and restrained from infringing the first applicant's rights acquired by the registration of the trademark numbered 2019/35883 ('the registered trademark') by using in the course of trade in relation to goods for which the registered trademark is registered, or any other mark so nearly resembling the registered trademark as to be likely to deceive or cause confusion as contemplated in section 34(1)(a) of the Trade Marks Act 194 of 19934 ('the Act');
- 2 The respondent is ordered, under section 34(3)(b) of the Trade Marks Act, to remove the trademark "Salt of the Earth" from all deodorants in its possession or control, including its graphic representation in websites,

social media pages, packaging, or electronic materials. Alternatively, if such removal cannot be carried out, the respondent is directed to deliver all these items to the applicants for destruction.

- 3 The counterapplication is dismissed; and
- 4 The respondent shall pay the costs of both the application and the counterapplication on a party and party scale, including costs of counsel on scale B.

JUDGMENT

Nuku J:

Introduction

[1] This matter involves competing claims by the parties over the use of the trademark ‘Salt of the Earth’ in the deodorants they trade. The first applicant, as the registered owner of the trademark, asserts exclusive rights to use it based on its registration. The second applicant claims the right to use the trademark through authorization from the first applicant under an exclusive distribution agreement between them. The respondent, on the other hand, asserts to have vested rights to use the trademark under section 36 of the Trade Marks Act 1993 (the Act).

[2] The applicants initially filed the application seeking relief under s 34(3)(a)-(d) of the Act. However, they have since narrowed the relief sought to interdictory relief under s 34(a) and (b). Specifically, the applicants seek an interdict (a) prohibiting the respondent from using the trademark in connection with its deodorants, and (b) ordering the respondent to remove any reference to the trademark from its deodorants or to deliver the deodorants containing the trademark to them for destruction.

[3] The first applicant is the holder a registered trademark for the words ‘SALT OF THE EARTH’ in class 3 concerning the following goods: deodorants, aromatherapy oils, shower gels, soap, shaving cream, perfumes, balms, shampoo, conditioner, face wash, moisturizers, sun tanning lotion, after sun, bath salts, perfumery, essential oils, cosmetics, and hair lotions.

[4] The second applicant holds exclusive rights to use the trademark in South Africa and to import, distribute, and sell a variety of natural and organic deodorants under the ‘Salt of the Earth’ brand.

[5] The respondent manufactures, markets, distributes, and sells various products, including a roll-on deodorant. It uses a combination of the trademark ‘Salt of the Earth’ along with a device consisting of a black circular dot surrounded by three circles of circular dots placed above the words ‘Salt of the Earth’.

[6] The applicants' case is limited solely to the respondent's use of the trademark concerning deodorants. They argue that the mark used by the respondent, 'Salt of the Earth,' is identical to the first applicant's registered trademark. Its use in commerce, related to the goods for which the trademark is registered, has not been authorized by the first applicant. Therefore, such use, the argument continues, constitutes an infringement of the rights that the first applicant acquired through the trademark registration.

[7] The respondent initially opposed the application on multiple grounds but persisted with only two. The first is that the applicants have failed to establish one of the requirements of s 34(1)(a) of the Act, namely the likelihood of deception or confusion. The second relates to its claim of prior use of the trademark, which is protected under s 36 of the Act.

[8] Additionally, the respondent has also filed a counterapplication under s 27(1)(a) of the Act, seeking partial expungement of the first applicant's registered trademark to limit the applicants' rights to use it only for deodorants.

[9] The applicants' response to the first ground of opposition is that they are not required to prove the likelihood of deception or confusion because the trademarks involved are identical. This is because, under s 34(1)(a), the requirement to demonstrate the likelihood of deception or confusion only applies to a mark that closely resembles the trademark in question, not to identical marks.

[10] The applicants' response to the second ground regarding prior use is that the respondent has not supplied the evidence to support its claim of prior use.

[11] Responding to the counterapplication, the applicants point out that the first applicant manufactures not only deodorants but also some products belonging to class 3, and under the distribution agreement with the second respondent, it has authorized the second respondent to import, distribute, market, and sell these products in the Republic of South Africa.

[12] The issues to be decided in this application, therefore, are:

- a) Whether the applicants are required to establish the likelihood of deception or confusion;
- b) Whether the respondent has established its entitlement to use the trademark due to prior use as contemplated in s 36 of the Act; and
- c) Whether the respondent has established a case for the partial expungement of the trademark as required in s 27 of the Act.

[13] The resolution of the above issues occurs within the factual context I outline below.

Factual Background

[14] The first applicant is a company based in the United Kingdom that manufactures and distributes a variety of products, including roll-on deodorants, claimed to be natural and organically produced. It entered into an exclusive distribution agreement with the second applicant during 2021.

[15] The second applicant has been involved in importing and distributing health and wellness-related products in South Africa since 2001. One of the products it imports and distributes is the roll-on deodorant from the first applicant. This is in terms of the exclusive distribution agreement mentioned above. The roll-on deodorant is sold in South Africa under the label ‘Salt of the Earth’.

[16] Mr. Peter James Lowe (**Mr. Lowe**) is the respondent’s directing mind, and he deposed to the papers filed on its behalf. He states that he started his career in the health and wellness industry in 2007, selling water distillation systems, glyconutrients, and cellphone radiation shields. After being introduced to Pink Himalayan salt in 2008, he decided to sell his Kruger Rands to raise enough capital to buy Pink Himalayan salt, grinders, bottles, and other equipment. He hired a Pietermaritzburg-based advertising company to design labels, and during that process, he came up with the name of his new venture, ‘Salt of the Earth.’

[17] Between 2007 and 2018, Mr. Lowe operated his business as a sole proprietor under the name Salt of the Earth. In 2018, he registered the respondent, Salt of the Earth Natural Products Proprietary Limited. He could not register the respondent

as Salt of the Earth because that name had already been reserved. The respondent, however, trades as Salt of the Earth and acquired all of Mr. Lowe's intellectual property and rights that he had developed between 2007 and 2018.

[18] Mr. Lowe confirms that the respondent uses the mark 'Salt of the Earth'. However, the mark is used with a device consisting of a black dot surrounded by three circles, also made of black dots, above the words 'Salt of the Earth'. Mr. Lowe also confirms that the mark is applied to various products, including roll-on anti-odorants and deodorants, which are sold through various channels, including online and in-store.

[19] According to Mr. Lowe, he began selling the Salt of the Earth range of anti-odorants and deodorants in 2010. To support this, he attached copies of six invoices dated between 27 February 2015 and 22 March 2015. These invoices cover a total of nineteen items, including (a) one unit of deodorant sold to Health NUT-rition for R35, (b) two units of natural deodorant sold to Natures Pantry for R35 each, (c) one unit of underarm deodorant sold to GS Hope for R45, (d) twelve units of underarm deodorant sold to Howick Health Nut for R35 each, (e) two units of underarm deodorant sold to Peels Honey Merrivale for R35 each, and (f) one unit of underarm deodorant sold to Chrissie Briscoe.

[20] In addition to the above, Mr. Lowe attached his personal bank statements from First National Bank covering the period from 3 December 2008 to 3 July 2010. The point he raises about the statements concerns the references included for

some payments. Specifically, some payments list Salt of the Earth as the reference, while others use the names of role players in the health and wellness industry.

[21] Finally, Mr. Lowe undertook to deliver confirmatory affidavits from Judy Martin (Ms. Martin), Cheryl Tones, Karen Penny (Ms. Penny), Allan Richardson, Wendy Botha, and Madelize Hoek (Ms. Hoek), whom he describes as customers, distributors, and clients. However, the only affidavits that were submitted were from Ms. Martin, Ms. Penny, and Ms. Hoek, and I address the contents of these affidavits below.

[22] Ms. Martin confirmed her Lifestyle Health Store's connection with Mr. Lowe dating back to 2008. Relevant to these proceedings, she stated the following:

‘... to the best of my recollection Mr Lowe first supplied Salt of the Earth’s range of deodorants and anti-odourants to the Lifestyle Health Store in or about 2012.

8. I have only ever known Mr Lowe’s business as Salt of the Earth and the Lifestyle Health Store purchased Salt of the Earth’s range of products on a monthly and/or bi-monthly basis for a period of fifteen years as we had many customers who specifically came to the shop seeking to purchase the Salt of the Earth range of products and deodorants.

9. During or about 2022 the Lifestyle Health Store were approached by another supplier who was seeking to supply Lifestyle Health Store with a range of deodorants that were branded as Salt of the Earth. This occurrence was particularly strange as we have been consistently stocking and selling Mr Lowe’s Salt of the Earth deodorant at the Lifestyle Health Store for more than ten years at the time that we were approached.’

[23] Ms. Penny confirms her business, Healthy Living, is connected with Mr. Lowe and Mr. Lowe's Salt of the Earth product line, which she says is popular with her customers. However, she does not specify the names of the products she sources from Mr. Lowe or the respondent.

[24] Ms. Martin confirms that her business, Rafaa Products CC, has been associated with Mr. Lowe and his product range since around 2009. Regarding these proceedings, she states that:

‘... we also buy some of the Salt of the Earth's products for on sale which includes their roll-on deodorant, which we first purchased in or about 2010 and which has proven to be an excellent product.

6. While I have been dealing with Mr Lowe and Salt of the Earth since 2009, I first started saving in an electronic format in or about 2015. I attach hereto one such invoice dated 10 March 2015 and made out to Mr Lowe of Salt of the Earth in order to confirm our long standing relationship as well as the fact that Mr Lowe has always traded as Salt of the Earth.’

[25] Ms. Martin, however, failed to attach the invoice mentioned in her confirmatory affidavit. There were also two additional confirmatory affidavits by the respondent's employees. However, these affidavits do not refer to the respondent's sale and distribution of the deodorants.

[26] This application followed three letters sent to the respondent demanding the immediate stop of using the trademark Salt of the Earth on the deodorants sold by

the respondent. None of these letters received any response. Facing the lack of response, the applicants filed this application in October 2024 and served it on the respondent on 1 November 2024.

[27] The respondent, represented by a different law firm, filed its notice of opposition on 22 November 2024. Pursuant to an order dated 10 December 2024, made by Goliath AJP, the application was scheduled for a hearing on 19 May 2025. The order also provided for the applicants to submit their heads of argument on 5 May 2025, with the respondent to submit its heads of argument on 12 May 2025.

[28] The applicants submitted their heads of argument promptly, but the respondent did not. Instead, on 5 May 2025, the respondent's current attorneys filed their notice of substitution as attorneys of record along with a counterapplication. This was followed by an application to postpone the matter, which was opposed but ultimately granted, and the case was postponed to 12 August 2025. Subsequent thereto, the hearing was rescheduled to 13 August 2025.

[28] The founding affidavit in the counterapplication also serves as the response to the main application. In this affidavit, Mr. Lowe states that the applicants have only ever sold deodorants in South Africa and have never intended to use the trademark for any products other than deodorants. Therefore, he suggests that the trademark was registered without any genuine intention of using it for anything other than the deodorants that the second applicant distributes. As such, the

trademark is, in terms of s 27(1)(a) of the Act, subject to partial expungement to limit the rights it grants to only deodorants. Against this background, I now proceed to consider each of the issues that require determination in this application.

Is an applicant who relies on identical marks required, in terms of s 34 of the Act, to establish the likelihood of deception or confusion

[29] The key difference between the parties is whether s 34(1)(a) requires proof of a likelihood of deception or confusion when the trademarks are identical. The applicants argue that this is not necessary, while the respondent argues otherwise.

[30] In support of their argument, the applicants referred this court to an unreported decision of the Gauteng Division of the High Court, Pretoria, in *Cochrane Steel Products*¹ where that Court was referred *Carfind*² in support of an argument that the Supreme Court of Appeal in *Century City*³ stated that the likelihood of confusion of enquiry is only necessary when it is found that the marks were not identical.

[31] The respondent, on the other hand, cited authorities that addressed the likelihood of deception or confusion but did not specifically consider whether establishing the likelihood of deception or confusion is necessary in cases involving identical marks.

¹ *Cochrane Steel Products (Pty) Ltd v G Harrop-Allin & Sons*(6031/2021; 12358/2021) (unreported) at para [11]

² *Carfind (Pty) Ltd v Car Trader (Pty) Ltd* 2016 JDR 0314 (GJ), para 4

³ *Century City Apartments Property Services CC and Another v Century City Property Owners Association* 2010 (3) SA 1 (SCA)

[32] The answer to the question whether it is necessary to establish the likelihood of deception or confusion must be answered with reference to the provisions of s 34(1)(a) of the Act which provides that ‘The rights acquired by registration of a trademark shall be infringed by the unauthorised use in the course of trade in relation to goods or services in respect of which the trademark is registered, of **an identical mark** or of **a mark so nearly resembling it** as to be likely to deceive or cause confusion.’ (my emphasis)

[33] The reading of this provision suggests that it considers two types of marks: (a) an identical mark and (b) a mark that closely resembles the trademark enough to likely deceive or confuse. It is based on this interpretation that the applicants argue that the requirement to establish the likelihood of deception or confusion is not necessary regarding identical marks.

[34] The interpretation contended for by the applicants, in my view, accords with what Harms DP stated in **Century City**⁴ when considering whether the marks in question were identical. He stated the following:

‘[12] The next issue is whether the marks ‘Century City’ and ‘Century City Apartments’ are, in the wording of s 34(1)(a) ‘identical’. I think not. As the European Court of Justice indicated,

⁴ At paras [12]-[13]

‘[t]he criterion of identity of the sign and the trademark must be interpreted strictly. The very definition of identity implies that the two elements compared should be the same in all respects.’

(LT Diffusion SA v Sadas Vertbaudet SA [2003] ETMR 83 (European Trade Mark Reports) para 50.) This is, however, subject to the proviso that minute and wholly insignificant differences are not taken into account (Reed Executive Plc & Ors v Reed Business Information Ltd & Ors [2004] EWCA Civ 159; [2004] RPC 40 para 29). In other words, the de minimis principle applies.

[13] That is not the end of the inquiry because if the appellant’s brand name were to be confusingly similar to the registered mark (‘be likely to deceive or cause confusion’) it infringes. I am satisfied that the appellant’s brand name, in spite of the addition of the word ‘apartments’, is confusingly similar to Century City. The point is well illustrated by the facts in *Compass Publishing BV v Compass Logistics Ltd* [2004] EWHC 520 (Ch). The registered mark was the word ‘Compass’ in relation, in simplified terms, to computer and computer related services. The defendant traded in the same fields under the name Compass Logistics. After pointing out that the two marks were not identical in the light of *LTJ Diffusion SA v Sadas Vertbaudet SA* the court proceeded to consider whether they were confusingly similar. Laddie J said this (paras 24-25):...

[35] In the present case, the applicants argue that the marks are identical because the respondent uses exactly the word “Salt of the Earth.” Therefore, the definition of identity is established, making the requirement of likelihood of deception or confusion unnecessary.

[36] The respondent conceded that it uses the trademark Salt of the Earth on its products. That trademark is identical to the first applicant’s trademark SALT OF THE EARTH. The fact that the respondent uses it with a device does not diminish

the fact that the word mark ‘Salt of the Earth’ is similar in all respects to the first applicant’s registered trademark.

[37] Based on my reading of **Century City**, the question of whether there is a likelihood of deception or confusion only applies when the marks are not identical. In this case, since they are identical, that question is unnecessary. Therefore, the applicants do not need to prove a likelihood of deception or confusion. This is the only requirement of s 34(1)(a) that was contested, so it follows that the respondent’s use of the trademark Salt of the Earth infringes on the rights acquired by the first applicant through the registration of that trademark, unless the respondent’s use can be justified under the provisions of s 36, which I will address next.

Can the respondent’s use of the trademark be justified under s 36 of the Act?

[38] As previously stated, the applicants seek limited relief concerning the respondent’s use of the trademark for deodorants. The applicants do not object to the respondent trading as Salt of the Earth for products other than deodorants.

[39] I have set out above the evidence relied upon by the respondent to justify its use of the trademark based on s 36 of the Act, which reads as follows:

‘36. (1) Nothing in this Act shall allow the proprietor of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in respect

of goods or services in relation to which that person or a predecessor in title of his has made continuous and bona fide use of that trade mark from a date anterior-

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or

(b) to the registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his, whichever is the earlier, or to object (on such use being proved) to the trade mark of that person being registered in respect of those goods or services under section 14.'

[40] To justify its use of the trademark, the respondent must demonstrate, on a balance of probabilities, that it or Mr. Lowe has maintained continuous and genuine use of the trademark before the applicants' use or before its registration, whichever came first.

[41] The evidence provided by the respondent primarily focuses on his trading under the name Salt of the Earth, but there is insufficient proof connecting the use of the trademark to the deodorants. For instance, the invoices submitted by Mr. Lowe cover only two months between February and March 2015. This cannot be regarded as evidence of continuous trademark use. Furthermore, these invoices cover only about nineteen items sold during that period.

[42] There is also no evidence of sales before or after the period mentioned above, aside from the statements of Mr. Lowe and Ms. Martin. This is despite Ms.

Martin claiming that she started saving documents electronically around 2015. It is also despite the claim by Mr. Lowe that these products have been sold through various channels, including online and in-store.

[43] It is also important that the respondent received three letters demanding it stop trading with deodorants bearing the Salt of the Earth label before the application was filed. The fact that the respondent chose not to respond to those letters strongly suggests that it has not been continuously using the trademark on the deodorants.

[44] The references to Salt of the Earth in the bank statements produced by Mr. Lowe do not advance the matter further. None of these references indicate that Mr. Lowe or the respondent has been consistently using the trademark in connection with the deodorants.

[45] Lastly, the confirmatory affidavits filed on behalf of the respondent also fail to advance the case, as they all attest only to the general use of the trademark with no specific reference to its use in deodorants. Overall, the evidence presented by the respondent falls far short of establishing the continuous and bona fide use of the trademark that the respondent claims. Therefore, the respondent's use of the trademark cannot be justified under s 36 of the Act. The remaining issue I next address is the counterapplication.

Is the trademark liable to partial expungement in terms of s 27 of the Act?

[46] Section 27 of the Act addresses the removal of trademarks from the register based on non-use. Relevant to these proceedings is subsection (1)(a), which states:

‘Subject to the provisions of sections 70(2), a registered trade mark may, on application to the court, or, at the option of the applicant and subject to the provisions of section 59 and in the prescribed manner, to the registrar by any interested person, be removed from the register in respect of any of the goods or services in respect of which it is registered, on the ground either-

(a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods or services by him or any person permitted to use the trade mark as contemplated by section 38, and that there has in fact been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof or any person so permitted for the time being up to the date three months before the date of the application;’

[47] The respondent seeks partial removal of the first applicant’s trademark from the register because the second applicant has only used it for deodorants in South Africa. Mr. Lowe believes that there was never any intention by the applicants to use the trademark on any other products besides deodorants.

[48] When faced with evidence suggesting that the second applicant might be entitled to import more than just deodorants under the distribution agreement, the respondent claims in its replying affidavit that all of these products are deodorants, except for one item of hand washes, which takes the matter no further. Why an item that is not a deodorant takes the matter no further is not explained.

[49] The counterapplication, in any case, does not seem to have been filed with honest motives because the respondent does not claim to trade in any of the products for which it seeks their removal. It appears that the counterapplication was submitted to provoke the applicants, and this Court should not tolerate the improper misuse of the justice system for purpose it was not intended for.

[50] Additionally, there is no ongoing dispute between the parties regarding the items in class 3 of the register, except for the deodorant, and the respondent cannot benefit from an order of partial expungement. Therefore, the trademark registration is not subject to partial expungement, especially not at the respondent's request, who approaches the court with unclean hands. That leaves only the issue of costs, which I now address.

Costs

[51] The applicants have succeeded, and in my opinion, the usual principle that costs should follow the outcome should apply. The applicants have sought costs on a party and party basis, including counsel costs on scale B.

[52] The applicants have also requested a separate cost order concerning costs related to the filing of the confirmatory affidavits, including their perusal. They argued that these additional costs should be awarded on an attorney and client scale.

[53] The reason for a separate order on the costs for filing and reviewing confirmatory affidavits is difficult to understand. This is because confirmatory affidavits are part of the main affidavits they verify. They are typically only a few pages long, and I don't see what a separate costs order would change overall. In my opinion, there is no valid reason for a separate order concerning the filing and review of the confirmatory affidavits. An order that the respondent pays party and party costs shall be made, and such costs shall include costs of counsel on scale B.

Conclusion

[54] To summarize, the respondent's use of the trademark for its deodorants infringes on the rights obtained by the first applicant through the trademark registration. The evidence presented by the respondent has failed to establish the respondent's entitlement to the protection conferred by s 36 of the Act. The application for partial expungement was not brought to resolve a bona fide and live dispute between the parties.

[55] Having considered all of the above, the application for an interdict (a) prohibiting the respondent from using the trademark in connection with its deodorants, and (b) ordering the respondent to remove any reference to the trademark from its deodorants or to deliver the deodorants containing the trademark for destruction, will be granted, and the counterapplication for the partial expungement of the trademark registration will be dismissed with costs.

Order:

[55] As a result, the following order shall issue:

- a) The respondent is interdicted and restrained from infringing the first applicant's rights acquired by the registration of the trademark numbered 2019/35883 ('the registered trademark') by using in the course of trade in relation to goods for which the registered trademark is registered, or any other mark so nearly resembling the registered trademark as to be likely to deceive or cause confusion as contemplated in section 34(1)(a) of the Trade Marks Act 194 of 19934 ('the Act');
- b) The respondent is ordered, under section 34(3)(b) of the Trade Marks Act, to remove the trademark "Salt of the Earth" from all deodorants in its possession or control, including its graphic representation in websites, social media pages, packaging, or electronic materials. Alternatively, if such removal cannot be carried out, the respondent is directed to deliver all these items to the applicants for destruction.
- c) The counterapplication is dismissed; and
- d) The respondent shall pay the costs of both the application and the counterapplication on a party and party scale, including costs of counsel on scale B.

LG NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicants: D J A Van Der Linde
Instructed by: Gunston Strandvik Robertson Inc, Cape Town

For respondent: E Malherbe
Instructed by: A Van Wyk Attorneys, Cape Town.