



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02036/ADJ/2024

AFRICAN RAINBOW MINERALS

Applicant

and

AFRICAN RAINBOW MEDIA (PTY) LTD

1st Respondent

(Reg. Number: 2023/181781/07

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

2nd Respondent

Presiding Member: N CAWE

Date of Decision: 29 January 2026

DECISION AND REASONS

Summary: Application in terms of section 160 of the Companies Act 71 of 2008 ("the Act") for a determination and order that the name of the First Respondent, AFRICAN RAINBOW MEDIA (Pty) Ltd (2023/181781/07), does not satisfy the requirements of Sections 11(2)(a)(iii), (11)(2)(b) and 11(2)(c)(i) of the Act, and that the First Respondent be directed to change its name to one that is not confusingly or deceptively similar to that of the Applicant. Held- Application succeeds. No order as to costs.

INTRODUCTION

1. The Applicant is AFRICAN RAINBOW MINERALS (PTY) LTD (“ARM”), a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 1933/004580/06 and with its registered address at 29 Impala Road, Chislehurst, Sandton, Gauteng, 2196.
2. The Applicant’s affidavit, in support of the default order was deposed to by DEBRA LOUISE MARRIOTT (Marriott) an attorney at Adams and Adams (“Adams”), the applicant’s attorneys of record. The founding affidavit in support of the main application was deposed to by Lucas Joseph Zeblon Sebaibai Moalusi (Moalusi), the Group Executive Legal Officer of the Applicant.
3. The First Respondent is AFRICAN RAINBOW MEDIA (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2023/181781/07 and with its registered address at: 2 Townsend Road, Hyde Park, Sandton, 2196. The director of the company is Terrence Omdut Kommal (“Kommal”).
4. The Second Respondent is the Commissioner of Companies and Intellectual Property Commission (CIPC), established by the Companies Act 71 of 2008 as a juristic person to function as an organ of the State, who is cited in his official capacity as the person responsible for the function of the Commission. No costs order is sought against the Commissioner, unless he opposes the application.

BACKGROUND TO THE APPLICATION FOR A DEFAULT ORDER

5. The Applicant issued and filed a notice of motion in compliance with form CTR142 in terms of the relevant sections of the Companies Act, 2008 and Regulation 145(3) of the Companies Regulations of 2011 (the Regulations) against the First

Respondent. The Applicant requested the Companies Tribunal to grant it the following relief as follows:-

- 5.1 Directing the First Respondent to change its name to one which does not incorporate the trademark “AFRICAN RAINBOW” or any other word or phrase which is confusingly and/or deceptively similar to the African Rainbow Minerals trademark;
 - 5.2 in the event that the first Respondent fails to comply with the order prayed for in paragraph 5.1 above within 2 weeks from the date of the order, that the Second Respondent be directed, in term of Section 160(3)(b)(ii) read with Section 14(2) of the Act, to change the name of the First Respondent to “2023/181781/07”, as the First Respondent’s interim company name on the Companies Register; and
 - 5.3 costs in the Applicant’s favour in the event that the First Respondent opposes this application.
6. The Applicant was first made aware of the existence of the First Respondent when its attorneys of record advised it of the registration of the First Respondent in 2023.
- The Applicant instructed the attorneys to address a letter to the First Respondent requesting it to change its name to one that is not confusingly similar to Applicant’s. The attorneys sent the email to the First Respondents’ director’s address obtained from a search of the CIPC database, (terrence.kommal@gmail.com.) No response was received from First Respondent.
7. Despite all the efforts of the Applicant to have the First Respondent change its name to one that does not incorporate the words AFRICAN RAINBOW, First Respondent has failed to do so. This led to the Applicant filing an application for relief with the Tribunal, on 29 October 2024, in terms of the Act.

8. The application documents were served on the First and Second Respondents, electronically, on 5 November 2024. There is proof of service attached to the Applicant's application documents.
9. The application documents were served by the Sandton Sheriff on the First Respondent by affixing them to the main gate of the business premises of the First Respondent as the premises were locked and no one was present to receive them.
The service was effected on 7 November 2024.
10. The First Respondent had until 5 December 2024 to file a response to the application,
in accordance with the requirements of the Regulations for such filing. Instead of filing
a response to Applicant's allegations, First Respondent applied for an extension/condonation.
11. The First Respondent raised two questions as its reason to apply for condonation. The first was that it was not clear whether the Applicant had registered the trademarks that it alleged had been infringed.
The second was that the Applicant had not complied with the Practice Guidelines of the Tribunal, regarding the authority of Marriott and Moalusi to act on
behalf of the Applicant.
12. First Respondent further demanded a range of documents from the CIPC and the Applicant that would enable him to respond to the infringement claim by the Applicant.

13. On 27 January 2025 the condonation application hearing was set down. There was

no appearance for the First Respondent. The Chairperson made a ruling that the matter be postponed to 14 February 2025.

14. On 14 February the hearing proceeded. At the hearing First Respondent requested

extracts from the CIPC claiming it could not continue at the hearing without them.

On 11 March 2025 the requested documents were emailed to First Respondent.

15. The hearing was eventually held and on 8 April 2025 the Tribunal issued a decision. The decision was that the issues raised in the extension/ condonation application should be raised in the main application. The Tribunal further afforded the First Respondent 30 days to file an answering affidavit to the main application, as recommended by the Chairperson of the hearing.

The deadline for the submission lapsed on 23 May 2025 without the First Respondent filing any Interlocutory application or answering affidavit to the main application following the Tribunal's extension/condonation ruling.

16. The non-response by the First Respondent has prompted the Applicant to lodge a default application. This was done on 15 July 2025. I am satisfied that the default application is justified, considering the lengths to which the Applicant and the Tribunal have indulged the First Respondent for it to comply with the regulations. I will then proceed to consider the main application in accordance with

Regulation 153.

REASONS FOR THE APPLICATION

17. The applicant contends that;

- 17.1 it has made continuous and substantive use of the African Rainbow trademarks in the course of trade in relation to a wide variety of goods and services;
- 17.2 The exclusive and distinctive character of the Applicant's well-known trademark will be unfairly damaged should the application not be granted as the Applicant has acquired substantial goodwill and reputation in the African Rainbow trademarks.
- 17.3 the Applicant maintains that the First Respondent's name is confusingly similar to the Applicant's registered trademark and, therefore, falls foul of the provisions of Sections 11(2) (b) and (c) of the Act and is likely to deceive or confuse members of the public into believing, falsely, that there is some connection between the First Respondent and the Applicant;
- 17.4 the first two elements of First Respondent's name "AFRICAN RAINBOW" are visually, phonetically and deceptively similar to the Applicant's well known trade mark. The additional word " MEDIA" is purely descriptive;
- 17.5 the Applicant's statutory trade mark rights are valid, enforceable and predate the incorporation of the First Respondent, which was only registered in 2023, by at least 22 years;
- 17.6 By appropriating the Applicant's distinctive and well-known name, First Respondent falsely implies a connection to the Applicant. The First Respondent is neither connected nor authorized by the Applicant to use the name and/or trademark; and

17.7 in view of this Applicant prays for the order set out in paragraph 4 above.

THE APPLICABLE LAW

18. Section 11 of the Act provides as follows:

“11 criteria for names of companies.”

(1) ...

(2) the name of the Company must (a) not be the same as-

(i) the name of another company, domesticated company, registered external company, close corporation, or co-operative.

(b) not be confusingly similar to a name, trademark, word expression contemplated in paragraph (a) unless-

(i) in the case of a name referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies.

(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company-

19. Section 160 of the Act deals with disputes concerning reservation or registration or company names and enunciates the jurisdiction of the Companies Tribunal as follows:

(1) A person to whom a notice is delivered in terms of this act with respect to an application for the reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.

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(2) *An application in terms of subsection (1) may be made – (a) within*

months after the date of a notice contemplated in subsection (1), if the applicant received such a notice, or (b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.

(3) *After considering an application made in terms of subsection (1) and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal:-*

(a) ***must make a determination*** *whether that name, or the reservation, registration of the name, satisfies the requirements of this act; and*

(b) *May make an administrative order directing- (i) the Commission to:*

(aa) *reserve a contested name or register a particular defensive name that had been contested, for the Applicant.*

(bb) *register a name or amended name that had been contested as the name of the company*

(cc) *cancel the reservation of a name, or the registration of a name, or the registration of a defensive name; or*

(dd) *transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or*

(ii) *a company to choose a new name, and to file a notice of amendment to its Memorandum of Incorporation, within a period and on any conditions that the tribunal considers just equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph”.*

EVALUATION

20. The Tribunal must evaluate whether the contested name satisfies the requirements as set out in Section 11(2) of the Act. The issue has been dealt with in a number of decided cases. I will rely on the guidance of a few for my decision.
21. “Similar” in section 11(2)(b) would be “having a marked resemblance or likeness” and that the offending name should immediately bring to mind the well known trademark or other name (**Bata Ltd v Face Fashions CC 2001(1) SA 844 SCA**). The test for “confusingly similar” is, as in the case of passing-off. “...a reasonable likelihood that ordinary members of the public, or a substantial section thereof, may be confused or deceived into believing that the goods or merchandise of the former are the goods or merchandise of the latter. Confusion or deception is a question of fact to be determined in light of the particular circumstances of the case” (**Adidas AG & Another v Pepkor Retail Limited (187/12) [2013] ZASCA 3 at paragraph 28**)
22. In considering further case law on the concept of “confusingly similar” it was stated in **Link Estates (Pty) Ltd v Rink Estates 1979(2) SA 276 at 280**, that “*it must be as alike in a manner that will confuse the “ordinary reasonable careful man, that is, not the very careful man nor the very careless man”. The “reasonable man” has been further qualified as:-* “A rule of long standing requires that the class of persons who are likely to be the purchasers of the goods in question must be taken into account in determining whether there is a likelihood of confusion.

(Reckitt and Coleman SA (Pty) Ltd v S c Johnson and son SA (Pty) Ltd

1993

(2) SA 276 [E] at 280)

23. In 1983, the **SCA in Plascon Evans Paints (Pty) Ltd v Van Riebeeck (Pty) Ltd**

1983 (3) SA 623 (A) explained that it is necessary to consider the dominant and striking features of the marks. In the instant case “**AFRICAN RAINBOW MINERALS**”, if abbreviated to “**ARM**”, would bear a striking similarity to First Respondent’s company name “**AFRICAN RAINBOW MEDIA**”. Should it be abbreviated it would also be “**ARM**”. The resemblance would in most probability bring to mind the well known trade mark of the Applicant, thus causing confusion.

24. The court’s approach in such matters is whether the mark or name is likely to “*falsely imply or suggest, or be such as would reasonably mislead a person to believe, incorrectly, that the respondent company is part of, or associated with the applicant company*” (**Bata Ltd v Face Fashions CC 2001 (1) SA 844**)

25. Having considered the Applicant’s **African Rainbow Minerals** trademark and the cases referred to above against the First Respondent’s name, **AFRICAN RAINBOW MEDIA**, I am persuaded that the First Respondent is in breach of Section 11 of the Companies Act. The mere addition of **MEDIA** to the First Respondent’s name does not adequately distinguish it from the well-known trade mark of the Applicant. In view of this the application succeeds.

ORDER

26 I, therefore, make the following order:-

- a). The First Respondent is directed to change its name to one that does not incorporate the words “**AFRICAN RAINBOW**” and is not confusingly and/or deceptively similar to the Applicant’s African Rainbow Minerals trademark.
- b) The First Respondent is ordered to give notice of the amendment of its Memorandum of Incorporation within 60 days of receipt of this order.
- c) The Second Respondent is directed to change the name of the Respondent to the regulative number **(2023/181781/07)** in the event the First Respondent not complying with the above within sixty (60) days from date of this order.
- d) That the Second Respondent cause this order to be served on the First Respondent within seven (7) business days calculated from the date of receipt of thereof.
- e) There is no order as to costs as the matter is not opposed.

NOMAGCISA CAWE: MEMBER OF THE COMPANIES TRIBUNAL