

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO. CT02522ADJ2025

In the matter between;

SUN INTERNATIONAL (SOUTH AFRICA) LIMITED

Applicant

and

SUN CITY SHOP (PTY) LIMITED

First Respondent

(2024/779898/07)

COMPANIES AND INTELLECTUAL PROPERTY

Second Respondent

COMMISSION

Tribunal Member: DR Terblanche

Date: 10 February 2026

Decision (Reasons and Order)

THE PARTIES

1. The Applicant is Sun International (South Africa) Limited, a South African company incorporated in accordance with the laws of South Africa, with its registered address at 6 Sandown Valley Crescent, Sandown, Sandton, 2146, Gauteng.
 2. The First Respondent is SUN CITY SHOP (Pty) Limited, a company incorporated in terms of the Companies Act 71 of 2008, registration no. 2024/779898/07, with its registered address at 15 Hough Street, Roodezand, Western Cape, 6820, South Africa.
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3. The Second Respondent is the Companies and Intellectual Property Commission, established by the Companies Act 71 of 2008, as a juristic person to function as an organ of state.

THE APPLICATION AND PROCEDURAL BACKGROUND

4. This is an application under Regulation 153(1) and Regulation 153(2)(b) of the Companies Regulations 2011. The Applicant requests an order, according to Section 160(1) of the Companies Act 71 of 2008 ("the Act"), stating that the name Sun City Shop (Pty) Limited does not meet the requirements set out in Sections 11(2)(a), 11(2)(b), and 11(2)(c)(i) of the Act. The Applicant further asks that the First Respondent be instructed to select a new name as specified in Section 160(3)(b)(ii) of the Act.
5. BRETT MARK HOPPE, general manager of the Applicant, submitted the affidavit supporting the Main Application, while NICOLE YVONNE SMALBERGER, from the Applicant's attorneys, provided the affidavit for the default application.
6. On 9 December 2025, the Applicant filed its application for relief in terms of Section 160 of the Act. The Tribunal processed and allocated a case number to the matter on 11 December 2025.
7. In terms of Regulation 142(2) of the Companies Regulations, the Applicant was then required to serve a copy of the Main Application on the Respondents within five (5) days.
8. On 15 December 2025, the Deputy Sheriff of the High Court served a copy of the Main Application at the registered address of the First Respondent, being, 15 Hough Street, Roodezand, Western Cape, 6820, South Africa. The Main Application was also served on the First Respondent electronically, on

11 December 2025. The Main Application was also sent to the Second Respondent by e-mail on 11 December 2025.

9. The Applicant submitted that the application for relief was properly served on the First and Second Respondents. The Applicant attached copies of proof of service on the Respondents to its default order application.
10. In terms of Regulation 143 of the Companies Regulations, the First Respondent had until 16 January 2026 to file and serve its answer to the Main Application.
11. The Respondents have not submitted their opposition to the Main Application. The Applicant therefore seeks a default order in accordance with Regulation 153, given the Respondents failure to provide a response.

THE RELIEF THE APPLICANT SEEKS

12. The Applicant requests that the Tribunal grant a default order against the First Respondent, in the following terms:
 - 12.1 that the First Respondent's name does not comply with Sections 11(2)(a), 11(2)(b) and 11(2)(c)(i) of the Act;
 - 12.2 that the First Respondent is directed, in terms of Section 160(3)(b)(ii), to choose a name which does not consist of, or incorporate, the words **SUN CITY**, or any other mark which is confusingly and/or deceptively similar to the Applicant's **SUN CITY** trade mark;
 - 12.3 in the event that the First Respondent fails to change its name within 2 months from the date of the order, that the Second Respondent be directed, in terms of Section 160(3)(b)(ii) read with Section 14(2) of the Act to change the First Respondent's name to 2024/779898/07 (Pty) Limited, as the First Respondent's company name in the Companies Register; and

12.4 an order for the Applicant's costs in terms of Regulation 156 of the Act.

THE APPLICANT'S SUBMISSIONS

13. The Applicant's submissions and arguments appear from the affidavits of BRETT MARK HOPPE, general manager of the Applicant, and NICOLE YVONNE SMALBERGER, from the Applicant's attorneys.

ABOUT THE APPLICANT

14. Sun International Limited Group is a leading African tourism and leisure company, operating renowned resorts, luxury hotels, and entertainment venues in multiple countries, including South Africa.
15. In the last 30 years, Sun International has invested over US\$1.5 billion in South African tourism infrastructure, employs about 6,500 people, indirectly created 50,000 jobs, and impacts over 500,000 livelihoods in southern Africa.
16. The Applicant owns the **SUN CITY** trademark in South Africa, first used in 1979 for its North-West province resort, which features five accommodation options, seven bars, twenty-four restaurants/cafes, a vacation club, concert venues, two golf courses, retail outlets, and a waterpark.

THE APPLICANT'S REGISTERED RIGHTS IN AND TO ITS SUN CITY TRADE MARK

17. The Applicant has registered its **SUN CITY** trade mark in a number of classes in South Africa.
18. The Applicant's **SUN CITY** trade mark has been and is used by the Applicant extensively on a day-to-day basis in relation to all its business activities,

products and services and is extensively recognised worldwide and across South Africa. As a result, it is an extremely well-known and iconic brand in South Africa.

19. The Applicant has spent substantial amounts of money in the promotion and advertising of its **SUN CITY** trade mark over the years and has consequently established a very strong reputation in its trade mark.
20. As a result of its extensive use, the Applicant has acquired a substantial reputé and strong common law rights in its **SUN CITY** trade mark, in addition to its statutory rights.
21. Applicant's **SUN CITY** trade mark has become an asset of enormous commercial value and importance to the Applicant. Any unauthorised use of this trade mark, or of confusingly or deceptively similar marks, will be damaging to the reputation and the business of the Applicant in South Africa.

CORRESPONDENCE

22. The Applicant first became aware of the First Respondent's name in July 2025, following the discovery by the Applicant's attorneys that the First Respondent had incorporated a company under the name Sun City Shop (Pty) Ltd. the Applicant's attorneys promptly reported it to the Applicant.
23. On 21 July 2025, the Applicant's attorneys issued and sent an email containing a letter of demand to the First Respondent requesting the First Respondent to voluntarily amend its company name to exclude any mark resembling the Applicant's **SUN CITY** trademark, and to cease all usage of the mark **SUN CITY**, or any confusingly similar mark, in the course

of trade. The email enclosing the letter was addressed to the director's email address appearing from the First Respondent's incorporation documents.

24. No reply was received from the First Respondent. Consequently, the Applicant's attorneys attempted to contact the First Respondent telephonically using the number listed for its director. Despite multiple attempts, the calls remained unanswered; alternatively, when the Applicant and the accompanying letter of demand concerning SUN CITY SHOP (PTY) LIMITED were referenced, the First Respondent would terminate the call.
25. At present, the First Respondent's name remains unchanged and no response has been forthcoming. Under these circumstances, the Applicant has no alternative but to initiate a formal objection.

GROUND OF OBJECTION

26. In support of its objection the Applicant referenced various sections of the Act namely Section 160(1) which provides that –

“...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 the Act.

27. The Applicant holds a substantial interest in the first respondent's name for purposes of section 160, given that the names involved are confusingly or deceptively similar to the well-known and registered Sun City trademark, in which the Applicant possesses significant and direct commercial interest.

28. The Applicant further referenced Sections 160(2)(b) and Section 11(2) of the Act,

28.1 Section 160(2)(b) of the Act provides that -

“An application in terms of subsection (1) may be made:

(b) on grounds 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.”

28.2 Section 11 (2) of the Act provides that -

“(2) The name of a company must—

(a) not be the same as—

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

(ii) a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of section 12(9), or as a business name in terms of the Business Names Act, 1960 (Act 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;

(iii) a registered trade mark belonging to a person other than the company, or a mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act 194 of 1993), unless the registered owner of

that mark has consented in writing to the use of the mark as the name of the company; or

- (iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act 17 of 1941), except to the extent permitted by or in terms of that Act;

[S 11(2)(a) substituted by s 6(c) of Act 3 of 2011.]

- (b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless—
 - (i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies;
 - (ii) in the case of a company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company, or a person who controls the company, is the registered owner of that defensive name or business name;
 - (iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trade mark or mark, or is authorised by the registered owner to use it; or
 - (iv) in the case of a name similar to a mark, word or expression referred to in paragraph (a)(iv), the use of that mark, word or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941;

[S 11(2)(b) inserted by s 6(d) of Act 3 of 2011.]

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

*(i) is part of, or associated with, any other person or entity;
...*

30. The Applicant's arguments that the First Respondent's name contravenes section 11(2) of the Act appears immediately below.
31. The Applicant's Sun City trademark, is wholly incorporated into the First Respondent's name, Sun City Shop (Pty) Ltd, serving as the dominant and most distinctive element. The term "Shop" does not differentiate the First Respondent's name from the Applicant's registered trademark, being purely descriptive and non-distinctive. Considering the Applicant offers various services including food, beverage and retail shops at the Sun City resort, the addition of "shop" only increases the likelihood of public confusion regarding the association between the First Respondent and the Applicant.
32. The incorporation of the Sun City trademark in the First Respondent's name has not been sanctioned or authorized by the Applicant.
33. The First Respondent's name is therefore identical or confusingly similar to the Applicant's registered Sun City trademark and thus contravenes the provisions of section 11(2)(a)-(b) of the Act.
34. The inclusion of the word "Shop" implies an interest in goods and services for which the Applicant's Sun City trademark is registered across various classes.
35. Use of the First Respondent's name in connection with services identical or similar to those covered by the earlier Sun City trademark registration, and for which the Applicant has used the trademark extensively, constitutes

infringement under section 34(1)(b), or alternatively section 34(1)(c), of the Trade Marks Act.

36. Section 11 of the Act does not require overlapping business interests for a company name to be objectionable. The determining factor is whether the name is identical or confusingly similar to a trademark, without necessitating analytical comparison of services. The similarity between "Sun City" and "Sun City Shop" is readily apparent, with "shop" providing no distinctive value. Public members are likely to assume association or endorsement by the Applicant.
37. Use of the first respondent's name in trade is likely to take unfair advantage of, or be detrimental to, the distinctive character and repute of the Applicant's well-known Sun City trademark. Such use is likely to dilute the Applicant's trademark rights and constitutes infringement under section 34(1)(c) of the Trade Marks Act.
38. Given the extensive reputation of the Applicant in the Sun City trademark, use of the first respondent's name in trade is liable to deceive or confuse the public into believing there is a connection between the parties. In particular, the public may believe that the first respondent is authorized to render goods or services on behalf of the Applicant, or is an extension thereof. This use also amounts to passing off under common law.
39. The First Respondent's company name fails to comply with section 11(2)(c) of the Act as it falsely implies association with the Applicant and is likely to mislead the public.
40. In support of the Applicant's claim that the First Respondent's name contravenes Section 11 of the Act, the Applicant refers the Tribunal among others, to –

- 40.1 *Hollywood Curl (Pty) Ltd v Twins Products (Pty) Ltd* 1989 (1)SA 255 (A) – the use of the mark Hollywood Curl by the Appellant on its merchandise constituted passing off in that there was reasonable likelihood that ordinary members of the public might be confused or deceived into believing that such merchandise emanates from the Respondent. The Appellant was also trading under the name Hollywood Curl.
- 40.2 *American Chewing Products Corporation v American Chicle Co* 1948 (2)SA 736A where the court considered the various factors when comparing names mindful that the comparison is not always side-by-side and imperfect recollection at a later stage resulting in confusion and leads to injury in the business, particularly since the complainant has no control over the quality of the goods or services by the other party.
41. In support of its request that the Tribunal directs the Second Respondent to change the First Respondent's name if the First Respondent fails to do so, under the relevant sections of the Act, the Applicant cited a High Court order (case no. 65895/2019) involving *Comair Limited v Kulula South Africa (Pty) Ltd & Others*, the Applicant noted that the court allowed the Commissioner of Companies to rename a company to its registration number and confirmed that the Companies Tribunal can direct CIPC to do so if a company fails to comply with such an order. The Applicant included a copy of the 31 March 2022 order in their filing.
- 41.1

ANALYSIS AND EVALUATION

42. The Tribunal has jurisdiction to hear this matter under Section 160 of the Companies Act, 2008.
43. The Applicant, Sun International (South Africa) Limited, has established a direct and substantial interest in the name of the First Respondent, as its well-known and registered **SUN CITY** trademark constitutes the dominant and distinctive component of the Respondent's corporate identity.
44. The application is procedurally sound. The Main Application was properly filed on 9 December 2025 and subsequently served on all Respondents in compliance with the Companies Regulations. Service was effected electronically on the First and Second Respondents on 11 December 2025, and physical service was completed at the First Respondent's registered address by the Deputy Sheriff on 15 December 2025. The First Respondent's deadline to file an answering affidavit, 16 January 2026, has passed without any response or request for an extension. Consequently, the Respondents are in default, and the Applicant is entitled to seek a default order under Regulation 153.
45. On the substantive merits, the Applicant presents an unopposed and compelling case. It holds registered rights in the **SUN CITY** trademark across multiple classes in South Africa. These rights are significantly bolstered by decades of continuous and extensive use since 1979, substantial financial investment, and nationwide promotional activity, cementing the mark's status as an iconic and well-known brand. These established rights predate the First Respondent's 2024 incorporation by many years.
46. The First Respondent's name, "**SUN CITY SHOP (PTY) LTD**", incorporates the Applicant's trademark in its entirety as its dominant and memorable element. The appended word "**SHOP**" is purely descriptive and non-distinctive; it does not serve

to differentiate the Respondent from the Applicant but may, in fact, increase the likelihood of confusion, given that the Applicant's resort complex operates numerous retail outlets. Applying the established legal test, which considers the impression on a consumer with an imperfect recollection, the names are confusingly similar. This constitutes a contravention of Sections 11(2)(a)(iii) and 11(2)(b) of the Act.

47. Furthermore, by appropriating this famous mark, the Respondent's name falsely implies or suggests a commercial association with the Applicant and its renowned resort. This is reasonably likely to mislead the public into believing the Respondent is authorized by or affiliated with the Sun International group, thereby contravening Section 11(2)(c)(i) of the Act. The Applicant confirms it has not provided any authorisation for this use, and the Respondent's failure to engage with pre-litigation correspondence underscores the absence of a legitimate claim to the name. The continued registration and use of the name pose a clear risk of public deception, dilution of the trademark's distinctive character, and potential infringement of the Applicant's rights under the Trade Marks Act.
48. In evaluation, the Applicant has presented a clear, well-substantiated, and entirely uncontested case. The Respondent has chosen not to participate in the proceedings despite proper notice. The procedural requirements for a default order are fully satisfied, and the substantive legal tests for a contravention of Section 11(2) are decisively met on the unchallenged facts.

FINDINGS

49. Upon consideration of the application and the supporting affidavits, and noting the First Respondent's default, the Tribunal finds as follows:

49.1 The Tribunal has jurisdiction to hear this matter. The application complies with all prescribed formalities. The Respondents are in default as contemplated by Regulation 153 of the Companies Regulations, 2011.

49.2 The Applicant has a direct and substantial interest in the name of the First Respondent for the purpose of Section 160 of the Act.

49.3 The company name "SUN CITY SHOP (PTY) LTD" (Registration Number: 2024/779898/07) contravenes Sections 11(2)(a)(iii), 11(2)(b), and 11(2)(c)(i) of the Companies Act, 2008. It is confusingly similar to the Applicant's prior registered and well-known trademark and falsely implies an association with the Applicant.

49.4 The Applicant is entitled to the default order it seeks

ORDER

50. The Tribunal makes the following order:

50.1 The application for a default order in terms of Regulation 153 is granted.

50.2 It is determined that the name "SUN CITY SHOP (PTY) LTD" (2024/779898/07) does not satisfy Section 11(2) of the Companies Act, 2008. The name is confusingly similar to the Applicant's registered and well-known trademark and falsely implies an association with the Applicant.

50.3 The First Respondent is directed under Section 160(3)(b)(ii) of the Act to change its name to one that excludes "SUN CITY" and is not confusingly similar to it.

50.4 The First Respondent is required to file the necessary amendment with the Companies and Intellectual Property Commission (CIPC) within 60 days of the date of this order.

50.5 Should the First Respondent fail to comply, the Second Respondent (CIPC) is directed, under Section 160(3)(b)(ii) read with Regulation 153(5), to change the company's name to its registration number, "2024/779898/07 (PTY) LTD", to serve as the interim corporate name.

50.6 The First Respondent is ordered to pay the Applicant's costs in respect of this application.

Dated at Johannesburg on the 10th day of February 2026.

D Terblanche
Tribunal Member