IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02521ADJ2025

In the matter between:

ASSEMBLED INVESTMENTS (PTY) LTD (1996/008418/07)	**APPLICANT**
and	
ROSEMARY (PTY) LTD (2024/667553/07)	**FIRST RESPONDENT**
THE REGISTRAR OF COMPANIES	**SECOND RESPONDENT**

Presiding Member of the Companies Tribunal: DR MINAH TONG-MONGALO
Date of Decision: 13 February 2026

DECISION (Reasons and an Order)

A. INTRODUCTION AND BACKGROUND

[1] The Applicant is the proprietor of the registered trade mark ROSE-MARY, duly entered on the trademarks register under Registration Number 2016/26914 in class 33. The Applicant has, since prior to the registration of the impugned

company name, made continuous and bona fide use of the ROSE-MARY trademark in the course of trade within the Republic of South Africa. The mark enjoys substantial goodwill and reputation in relation to the Applicant's products.

[2] The First Respondent was incorporated under the name ROSEMARY (PTY) LTD on or about 3 April 2025, as appears from the disclosure certificate issued by the Companies and Intellectual Property Commission ("CIPC"). The Applicant became aware of the First Respondent's registration on or about 29 October 2024. Upon becoming aware of the First Respondent's registration, the Applicant undertook enquiries which revealed that the First Respondent's name is identical or confusingly similar to the Applicant's registered trade mark.

[3] The Applicant thereafter caused correspondence to be addressed to the First Respondent, placing it on notice of the Applicant's rights and calling upon it to take steps to amend its registered name so as to bring it into compliance with section 11(2) of the Act. The First Respondent has not taken any steps to effect such a change. The disputed name accordingly remains on the companies register, but its compliance with the Act is now formally placed in dispute through this application.

[4] The Second Respondent is cited solely in its statutory capacity as the authority responsible for the administration and maintenance of the companies register. No substantive relief is sought against the Second Respondent.

[5] The Applicant seeks a determination that the First Respondent's registered company name, ROSEMARY (PTY) LTD, fails to comply with the requirements of section 11(2) of the Companies Act 71 of 2008 and ought, for that reason, to be removed from the companies register.

[6] The essence of the Applicant's complaint is that the disputed name is confusingly similar to, and falsely suggestive of an association with, the

Applicant's registered trademark ROSE-MARY, bearing Trade Mark Registration Number 2016/26914 in class 33.

B. JURISDICTION

[7] This Tribunal is vested with jurisdiction to determine the present dispute by virtue of section 160(1) of the Companies Act 71 of 2008 ('the Act'), which empowers any person to apply to the Tribunal for a determination regarding whether a company name satisfies the requirements of the Act. The Applicant, as the proprietor of the ROSE-MARY trade mark and a person with a substantial legal interest in the matter, is accordingly entitled to bring this application.

[8] In terms of section 160(2)(b), an application of this nature may be brought at any time after the registration of the impugned name. The First Respondent's name remains on the companies register and its compliance with section 11(2) is now formally placed in dispute. The present application is therefore properly brought within the statutory framework.

[9] Regulation 142 of the Companies Regulations, 2011 prescribes the procedural requirements for initiating such an application, including the filing of Form CTR 142 together with a supporting affidavit. The Applicant has complied with these requirements, and all necessary documents have been duly lodged.

[10] Accordingly, the Tribunal has both the statutory authority and the procedural competence to adjudicate the dispute and to grant the relief contemplated in section 160(3) of the Act.

C. APPLICABLE LAW

2008 Companies Act

[7] Section 11 (2) (a) (iii) of the Act prohibits registration of a name that is the same as a registered trademark of another.

[8] Section 11(2)(b) of the Companies Act provides that a company name must not be confusingly similar to a name, trademark, unless the company is the owner of the trademark.

[9] Section 11(2)(c)(i) provides that a company name must not "falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company is part of, or associated with, any other person or entity".

[10] Section 160(3)(a) empowers the Tribunal to decide whether a name satisfies the requirements of section 11.

[11] Section 11 of the Act outlines the criteria for names permitted to be registered in the register of companies. Amongst others, the name in question should not be confusingly similar to a name, trademark, mark, word or expression of a registered trademark belonging to a person other than the company unless such trademark owner had consented to the use of their trademark.

D. SUMMARY OF THE APPLICANT'S LEGAL SUBMISSIONS

[12] The Applicant contends that the First Respondent's company name ROSEMARY (PTY) LTD is unlawful, undesirable, and confusingly similar to the Applicant's registered ROSE-MARY trade mark, thereby contravening section 11(2) of the Companies Act.

[13] The Applicant's case rests on the following key propositions:

13.1 **Infringement of Statutory and Common-Law Trade Mark Rights**

13.1.1 The Applicant is the proprietor of the ROSE-MARY trade mark, which enjoys substantial reputation and goodwill.

13.1.2 The First Respondent's use of the identical dominant element ROSEMARY constitutes: infringement under section 34(1)(c) of the Trade Marks Act; passing-off at common law; and unlawful competition.

13.2 The Applicant has not authorised or consented to such use.

13.3 **Likelihood of Confusion, Deception, or Non-Existent Association**

13.3.1 The visual, phonetic, and conceptual similarity between ROSEMARY and ROSE-MARY creates a real likelihood that members of the public will assume an association, endorsement, or connection between the parties.

13.3.2 Even minor differences (such as the hyphen) are immaterial under the *de minimis* principle.

13.3.3 The First Respondent's use dilutes the distinctive character of the Applicant's trademark and unfairly exploits its reputation.

13.4 **The Name is "Undesirable" Under the Companies Act**

13.4.1 Under the Companies Act, a company name is undesirable where it:

13.4.1.1 infringes or encroaches upon existing rights;

13.4.1.2 resembles a registered trade mark to the extent that confusion is likely;

13.4.1.3 creates avoidable or unnecessary confusion in the minds of the public; or

13.4.1.4 misleads the public into assuming a connection, association, or endorsement that does not exist.

13.5 The First Respondent's name falls squarely within these prohibitions.

13.6 The Authorities relied upon by the Applicant established the following settled principles:

13.6.1 confusing similarity, on its own, is sufficient to render a company name objectionable;

13.6.2 the dominant and memorable elements of the respective names are decisive in the comparison;

13.6.3 the assessment must take account of the imperfect recollection of the ordinary reasonable person;

13.6.4 names need not be identical—even non-identical names are unlawful where they mislead or create a likelihood of confusion; and

13.6.5 company names that resemble registered trade marks are particularly problematic, as they appropriate and dilute the goodwill vested in the mark.

E. Case Law And Tribunal Decisions that Support Trade-Mark Protection in Company Names

[14] in *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another*[1] the Constitutional Court emphasised the commercial significance of trade marks in modern society, noting that:

"In a society driven by consumerism and material symbols, trademarks have become important marketing and commercial tools that occupy a prominent place in the public mind. Consequently, companies and producers of consumer goods *invest substantial sums of money to develop, publicise and protect the distinctive nature of their trademarks*; in the process, well-known trademarks become targets for parody." [my emphasis]

[15] The Court's observation underscores a central principle of trade mark law: the distinctive character of a mark, and the substantial investment made to cultivate and protect that distinctiveness, warrant robust legal protection. It is precisely because trade marks function as powerful commercial identifiers—embodying reputation, goodwill, and consumer trust—that the law intervenes where another party adopts a confusingly similar name or mark. Such conduct threatens the very investment and distinctiveness that the Constitutional Court recognised as deserving of protection.

[16] The court articulated the proper analytical framework for disputes involving trade mark rights and competing constitutional interests and held[2]

"The question to be asked is whether, looking at the facts as a whole, and analysing them in their specific context, an independent observer who is sensitive to both the free speech values of the Constitution and the property protection objectives of trademark law, would say that the harm done by the parody to the property interests of the trademark owner outweighs the free speech interests involved."

[1] (CCT42/04) [2005] ZACC 7 at para 78.
[2] At para 82.

In the context of company-name disputes, the same balancing exercise applies. Where a company name appropriates or mimics a registered trade mark in a manner that causes confusion, misleads the public, or encroaches upon the trade mark proprietor's rights, the scale tips decisively in favour of protecting the integrity and exclusivity of the mark. The First Respondent's conduct in this matter falls squarely within that category.

[17] In the Companies Tribunal's decision *Mondi South Africa (Pty) Ltd v Mondi LL (Pty) Ltd and Another*[3], the Tribunal confronted the recurring difficulty that arises when a company incorporator or director adopts a company name that conflicts with an existing registered trade mark. In analysing this pattern of disputes, Prof Marumoagae observed:

"The Tribunal's different approaches and inconsistent reasoning in disputes relating to names that are the same as those of company incorporators or directors is concerning. This makes it difficult for those who approach this Tribunal to have certainty regarding the interpretation and application of the law and the likely outcome of their cases. It does not seem like the facts of all these cases, which involved the same Applicant raising the same complaint against different respondents, justified different outcomes. However, without adequate guidance from the Superior Courts regarding the current legal position relating to companies that registered as their names the names of their incorporators or directors, it seems like this Tribunal is likely to continue to issue inconsistent decisions on this matter depending on who is presiding over the matter. It is important, however, to assess whether registering a company on one's own name can be a defence against allegations of trade mark infringement in South Africa."[4]

[18] This commentary highlights a critical point: the mere fact that a director or incorporator shares a personal name with a registered trade mark does not, without more, confer a lawful entitlement to adopt that name as a company name. The Tribunal's inconsistent outcomes underscore the need for a

[3] (CT01288ADJ2023) [2023] COMPTRI 62 (24 May 2023).
[4] Ibid at para 37.

principled approach grounded in trade mark law, the Companies Act, and the protection of vested proprietary rights.

[19] In the present matter, the First Respondent's reliance—whether explicit or implied—on the personal name of a director cannot override the Applicant's prior statutory and common-law rights. As Prof Marumoagae notes, the question is not whether the director bears the name, but whether the adoption of that name in the commercial sphere infringes, dilutes, or misappropriates the trade mark proprietor's rights. Where, as here, the name is identical or confusingly similar to a registered trade mark, the defence of personal name cannot succeed.

[20] In *Orange Brand Services v Account Works Software*[5], the Court cautioned against an over-reliance on precedent in matters involving the likelihood of confusion, emphasising that:

"The authors of Kerly's Law of Trade Marks and Trade Names point out that whether there is a likelihood of deception or confusion is a question of fact, and for that reason, decided cases in relation to other facts are of little assistance, except so far as they lay down any general principle. While I have found various cases referred to by counsel for Account Works Software informative, each was decided on its own facts, without laying down any new principles, and I do not think it is helpful to refer to them."

[21] This passage underscores a critical principle: the assessment of confusing similarity is inherently fact-specific. While general principles may be distilled from prior decisions, each case ultimately turns on its own factual matrix, the nature of the marks or names in issue, and the context in which they are encountered by the public.

[22] Applied to the present matter, the Court's reasoning reinforces that the Tribunal must evaluate the First Respondent's name in its full factual context, including the Applicant's established trade mark rights, the visual and phonetic similarity of the names, the likelihood of imperfect recollection, and the real-world

[5] (970/12) [2013] ZASCA 158 (22 NOVEMBER 2013).

potential for deception or confusion. On these facts, the conclusion is unavoidable: the First Respondent's name appropriates the distinctive elements of the Applicant's trade mark and creates precisely the type of confusion the law seeks to prevent.

F. ANALYSIS AND FINDINGS

[23] *Dominant Element and the De Minimis Principle*

23.1 The dominant and distinctive element in both names is ROSEMARY / ROSE-MARY. The only difference is a hyphen, which is legally insignificant.

23.2 In *Century City Apartments Property Services CC v Century City Property Owners' Association* 2010 (3) SA 1 (SCA), the Court quoted a European Court of Justice which stated

"The very definition of identity implies that the two elements compared should be the same in all respects."

However, the above is subject to the proviso that minute and wholly insignificant differences are not taken into account (paras 12)

23.3 This principle has been applied consistently by the Tribunal, including in Red *Bull GmbH v Red Bull Farms (Pty) Ltd* [CT007JAN2019]. Accordingly, the names are effectively identical for purposes of section 11(2).

[24] *Likelihood of Confusion or False Association*

24.1 **Imperfect Recollection**- In *American Chewing Products Corporation v American Chicle Company* 1948 (2) SA 736 (A) at 742, Greenberg JA held:

"The Court must not only consider the marks when placed side-by-side but must have regard to the position of a person who… with an imperfect recollection… comes across the other mark."

24.2 This principle is directly applicable. Consumers encountering ROSEMARY (PTY) LTD after previously encountering ROSE-MARY are likely to assume a connection.

24.3 The decisive issue is whether the similarity between the names creates a reasonable likelihood that the public will assume that the one entity is the other, or that some form of commercial association exists between them. (Cilliers, Louw & Van der Merwe Webster & Page: South African Law of Trade Marks (4 ed, LexisNexis 1997) 15–16.)

24.4 Because the names are virtually indistinguishable and the Applicant's mark enjoys significant market recognition, the risk of confusion is considerable.

[25] *Passing-Off Principles Apply to Company Names*

25.1 In *Hollywood Curl (Pty) Ltd v Twins Products (Pty) Ltd* 1989 (1) SA 255 (A) 267H–268A, the Appellate Division held that there was "a reasonable likelihood that ordinary members of the public might be confused or deceived into believing that such merchandise emanated from the respondent". The Court confirmed that the use of a confusingly similar name may, on its own, constitute passing-off. The same reasoning applies here.

[26] *Infringement of Statutory and Common-Law Rights*

26.1 The Applicant is the proprietor of the ROSE-MARY trade mark, registered in class 33, which enjoys substantial goodwill and reputation in the market. The First Respondent's use of the confusingly similar name ROSEMARY:

26.1.1 infringes section 34(1)(c) of the Trade Marks Act, in that it takes unfair advantage of, and is detrimental to, the distinctive character and repute of the Applicant's mark;

26.1.2 constitutes passing-off, as it misrepresents to the public that the Respondent's business or goods are connected with, endorsed by, or emanate from the Applicant; and

26.1.3 amounts to unlawful competition, given that it appropriates and exploits the Applicant's established goodwill.

26.2 The Applicant has not authorised, permitted, or consented to the Respondent's use of its trade mark or any confusingly similar name.

[27] *Registrar's Directives Confirm the Name is "Undesirable"*

27.1 Practice Note 1 of 2008, issued by the Registrar of Companies under the Companies Act 61 of 1973, provides that a company name is undesirable where it incorporates or is confusingly similar to a registered trade mark unless the applicant has rights to such mark. The Directive further emphasises that the Registrar must avoid registering names that may mislead or confuse the public or prejudice the rights of trade mark proprietors. The Companies Tribunal has consistently applied Practice Note 1 of 2008 in name-dispute matters, including Red Bull GmbH v Red Bull Farms (Pty) Ltd (CT007JAN2019), confirming that a name is undesirable where it incorporates or is confusingly similar to a registered trade mark.

[28] *No Vested Rights in the Disputed Name*

Cilliers, writing in THRHR (1998 and 1999), explains that the central enquiry in name-dispute matters is whether the existing company has vested rights in its name such that the registration of a new, conflicting name would be undesirable.[6] In the present matter, the First Respondent's adoption of a name identical to the Applicant's registered trade mark appears deliberate. Any suggestion that the First Respondent has acquired rights in the disputed name is therefore untenable.

[29] Here, the First Respondent's adoption of a name identical to the Applicant's trade mark appears deliberate. Any purported rights are therefore nullified.

[30] *Tribunal Precedent on Undesirability*

In *Dimension Data (Pty) Ltd/ Chokochela Internet Solutions (Pty)* CT01503ADJ2023, the Tribunal held that an infringing name remaining on the register may cause deception and confusion" and "hinder CIPC's role in maintaining and promoting good governance."

The same reasoning applies here.

[6] J.B. Cilliers "Company Names and Vested Rights" (1998) 61 THRHR 1; (1999) 62 THRHR 1.

[31] When the statutory provisions, the applicable case law, the Registrar's Directives, and the academic authority are considered collectively, the conclusion is inescapable:

31.1 the name ROSEMARY (PTY) LTD is confusingly similar to the Applicant's registered ROSE-MARY trade mark;

31.2 its use inevitably conveys a false impression of association, endorsement, or connection with the Applicant;

31.3 it infringes the Applicant's statutory rights under section 34 of the Trade Marks Act and its common-law rights in passing-off;

31.4 it is undesirable within the meaning of the Companies Act and is calculated to cause commercial, reputational, and legal prejudice; and

31.5 it cannot lawfully remain on the companies' register in its current form.

[32] In these circumstances, section 160(3) of the Companies Act empowers—and, in light of the evidence, obliges—the Tribunal to direct that the First Respondent's name be removed or amended so as to eliminate the offending similarity.

G. ORDER

[33] In the premises, the Tribunal finds as follows:

33.1 The First Respondent's company name, ROSEMARY (PTY) LTD, is confusingly similar to the Applicant's ROSE-MARY trade marks and accordingly contravenes section 11(2)(b) of the Companies Act.

33.2 The First Respondent's name falsely implies, or is reasonably likely to mislead a person into believing, that the First Respondent is associated with, endorsed by, or connected to the Applicant, in contravention of section 11(2)(c)(i) of the Act.

[34] Should the First Respondent fail to comply with this order within 30 calendar days of its issuance, the Second Respondent is directed, in terms of section 160(3)(b)(ii), to record the First Respondent's name as its registration number.

[35] The Tribunal's Recording Officer (Registrar) is directed to serve this order on

the Respondents.

[36] There is no order of costs.

Dr MINAH TONG-MONGALO