



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02511/ADJ/2025

KAP LIMITED

(REGISTRATION NO 1978/000181/06)

Applicant

and

KAPS ENGINEERING (PTY) LTD

(REGISTRATION NO 2023/109847/07)

1st Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

2nd Respondent

DECISION AND REASONS

Presiding Member of the Companies Tribunal: H K Dlepu

Date of Decision: 19TH April 2026

1. INTRODUCTION

- 1.1 The Applicant is **KAP LIMITED** a company duly incorporated in terms of the laws of the Republic of South Africa, with registration number **1978/000181/06** and with its registered address at 3RD Floor, Building 2 The Views, Founders Hill Office Park, 18 Centenary Street, Modderfontein, Gauteng, 1645. The Applicant's affidavit was deposited to by the Secretarial Manager of the Applicant.
- 1.2 The First Respondent is **KAPS ENGINEERING(PTY) LIMITED**, a company incorporated in terms of the company laws of the Republic of South Africa, with registration number **2023/109847/07** and with its registered address at 12 Randall Road, Wadeville, Germiston, Gauteng, 1428.
- 1.3 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 the State.

2. BACKGROUND

- 2.1 The Applicant issued and filed a notice of motion in compliance with form CTR142 in terms of Section 180 to 184 of the Companies Act, 2008 and Regulation 145(3) of the Companies Regulations 2011 against the First Respondent, wherein the Applicant requested the Companies Tribunal to grant it the following relief by default namely:
 - 2.1.1 Directing the First Respondent to change its name to one which does not incorporate the trademark "**KAP**" or any other word or phrase which is confusingly and/or deceptively similar to the "**KAP**" trademark,
 - 2.1.2 In the event that the first Respondent fails to comply with the order set out in paragraph 2 above within the stipulated time by the Tribunal from the date of the order, that the Second Respondent, be directed, in terms of Section 160(93)(b)(ii) read with Section 42 of the Act, to change the name of the First Respondent to "**K2023/109874/07**"(**South Africa**) (**PTY**) **LIMITED** as the First Respondent's new company name on the Companies Register, and
 - 2.1.3 Granting the Applicant further and/or alternative relief.

2.2 The Applicant contends that the application is brought based on the following reasons:

2.2.1 This is an in terms of Section 160 of the Companies Act 71 of 2008 for a determination and an order that the name of the First Respondent, **KAPS ENGINEERING (PTY) LIMITED** registration number 2023/109847/07 does not satisfy the requirements of Sections 11(2)(a)(iii), and 11(2)(c)(i) of the Companies Act, and that the First Respondent should be directed to change its name, as provided for in Section 160, particularly Section 160(3)(b)(ii) of the Companies Act.

2.2.2 According to paragraph 27 to 32 of the Applicant's affidavit, the First Respondent had on numerous occasions been given an opportunity to co-operate of its own volition and was given an opportunity by the Applicant to choose a name which is not confusingly and/or deceptively similar to the Applicant's "**KAP**" trademark, however, the First Respondent failed to do so.

3. **THE APPLICANT'S ARGUMENT**

3.1. The Applicant was first made aware of the First Respondent when Moore Attorneys of the Applicant advised it of the registration of the First Respondent during October 2023. After conducting further searches the Applicant instructed Moore Attorneys to address a letter to the First Respondent alerting them of the Applicant's "**KAP**" trademarks. On the 18th of October 2024 a letter of demand was sent to the First Respondent's registered address cited on the First Respondents registered address obtained from the searches of the CIPC database.

3.2. The Applicants did not receive a response from the First Respondents. The Applicants submits that service was effected in accordance with the Companies Regulation in GN 34239 of April 2011, in terms of which a notice or document to be delivered, for any se contemplated in the Act, or the regulations, may be delivered in any manner as set out in Table CR3.

3.3. To date, the Applicant's Attorneys have not received a response from the First Respondent, its directors, or employees, despite various follow ups, and its failure to address the Applicants concerns given the continued presence of the First Respondent on the Companies Register the Applicant is thus left with no alternative but to proceed with the Application.

3.4. The Applicant therefore had no alternative but to file the Application for a relief.

3.5. The Applicant's trademarks are an important asset and are crucial to its business, and therefore the Applicant carefully protects its rights in them.

3.6. The applicant has registered various trademarks under "**KAP**". Some and not all of the various trademarks are listed in summary below as follows:

3.6.1. Trademark **KAP** registration number 2017/33428 in Class 36

3.6.2. Trademark **KAP** registration number 2017/33430 in class 39

3.6.3. Trademark **KAP** registration number 2017/33431 in class 42

3.6.4. The above-mentioned trademarks are still valid and in force. The statutory trademark rights arising from the "**KAP**" predate the date of incorporation of the First Respondent in 2023 by at least 6 years

3.7. The applicant contends that it has made continuous and substantive use of the "**KAP**" trademarks in the course of trade in relation to a wide variety of goods and services.

3.8. As a result of the widespread and long-term use of "**KAP**" trademarks over the years by the Applicant ,the Applicant has acquired a substantial goodwill and reputation in the" **KAP**" trademarks which is distinctive of its goods and qualifies for additional protection as a well-known trademark and it is highly likely that the members of the public will assume that the First Respondent is in some manner connected or associated with the Applicant or has been endorsed or licensed by the Applicant, which is not the case.

3.9. That the use of the First Respondent's name in trade is also likely to take an unfair advantage of, or be detrimental to, the distinctive character and repute of the Applicant's well-known "KAP" trademark. The use of the First Respondents name **KAPS ENGINEERING (PTY) LIMITED** will have an unfair advantage as the result of the distinctive character and the repute of the "KAP" trademark.

3.10. That the continued use of the First Respondent's name **KAPS ENGINEERING (PTY) LIMITED** will result in a diminution or dilution of the applicant's rights in its "KAP" trademark and will open the door to use by third parties of the company names that are identical or confusingly similar to its distinctive trademark.

3.11. That the Applicant also has no control whatsoever that activities of the First Respondent and the quality of its products and services, and given the nature of the goods sold by the First Respondent, the Applicant is extremely concerned that the First Respondent's name is confusingly similar to the Applicant's registered trademark and therefore, falls foul of the provisions of Section 11(2) (b) of the Act, and is likely to deceive or confuse members of the public into believing that there is some connection between the First Respondent and the Applicant. The use of the First Respondent's name will, therefore, also amount to passing off at common law.

3.12. That the First Respondent's company name does not comply with the provisions of Section 11(2)(c) of the Act.

4. **THE APPLICABLE LAW AND EVALUATION OF THE MERITS OF THE NAME OBJECTION APPLICATION**

4.1. 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 name referred to in paragraph (a)(i), each company being 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:

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

(i) *A person to whom a notice is delivered in terms of this act with respect to an application for 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, or any other person with 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.*

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

4.3. Companies Regulation 153 of 2011 provides for default orders:

4.3.1. if a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.

5. EVALUATION

5.1. I am convinced that Applicant has made out a case for the main application to be considered on a default basis. and I now proceed to deal with the merits of the case, and I found that the First Respondent was alerted and given sufficient opportunity to remedy the problem.

5.2. “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. 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 or confusion or deception is a question of fact to be determined in light of the particular circumstances of the case”.

5.3. “Confusingly similar” in section 11(2)(b) has to be examined carefully to determine if this in fact so *in casu*. In considering case law on the concept, *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; “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 considered in determining whether there is a likelihood of confusion.*

5.4. As early as 1948 the courts considered it appropriate to say “the court must not only consider the marks when placed side-by-side must have regard to the position of a person who might at one time see or hear one of the marks and later possibly with an imperfect collection of the mark, come across the other mark.

5.5. In 1983, the **SCA in Plascon Evans Paints (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 this instance “KAP” is the dominant and striking feature of both the Applicant’s trademark and the First Respondent’s company name.

5.6. The court’s approach in such matters is that: “the decision involves a value judgment and that the ultimate test is whether; on a comparison of the two marks, if can properly be said that there is a reasonable likelihood of confusion if

both marks are to be used together in a normal and fair manner, in the ordinary course of business”.

5.7. Most recently but before the promulgation of the Companies At, No 71 of 2008, in the case of **Polaris Capital (Pty) Ltd v The Registrar of Companies and Another 2010(2) SA 274 (SCA)**, the learned judge in terms of Section 45(2) of the 1973 Companies Act stated as follows: “it is submitted that by allowing the close corporation’s name to remain on the register, in addition to causing deception and confusion, its registration will hinder the registrar’s role in maintaining and promoting good governance and administration of corporate entities in the interest of the general public”.

5.8. Having considered the Applicant’s “**KAP**” trademark and the First Respondent’s **KAPS ENGINEERING (PTY) LIMITED** I am convinced that the First Respondent is in breach of the Companies Act.

6. **ORDER**

6.1. I therefore make the following order:

6.1.1. That the Default Judgment relief as sought by the Applicant be granted.

6.1.2. That the name objection application lodged by the Applicant against the regulation of the Companies name of the first Respondent being **KAPS ENGINEERING (PTY) LIMITED** in the Register of the Companies by the CIPC is hereby granted.

6.1.3. That the first Respondent’s name does not comply with Sections 11(2)(b) and 11(2)(c) (i) of the Act.

6.1.4. That the first Respondent is directed in terms of Section 160(3)(b)(11), to choose a name which does not consist of or incorporate the words **KAPS ENGINEERING (PTY) LIMITED** or any other combination which is confusingly and/or deceptively similar to the applicant’s **KAP LIMITED** trademark.

6.1.5. That the Second Respondent be directed to change the name of the Respondent to the regulative number “**K2023109847**” (**South Africa**) (**PTY**)

LIMITED in the event the First Respondent not complying with the above within sixty (60) days from date of this order.

6.1.6. That the Second Respondent cause, this order to be served on the First Respondent within fourteen (14) business days calculated from the date of receipt of this order.

6.1.7. There is no order as to costs.

HLALELENI KATHLEEN DLEPU
MEMBER OF THE COMPANIES TRIBUNAL