



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02071ADJ/2024

In the matter between:

INVESTEC BANK (LTD)
(1969/004763/07)

Applicant

And

CM INVESTECH (PTY) LIMITED
(2023/549046/07)

First Respondent

and

COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)

Second Respondent

Presiding Member of the Companies Tribunal: Nomagcisa Cawe

Date of Decision: 13 May 2026

DECISION (Reasons and Order)

1. INTRODUCTION

1.1. The applicant is INVESTEC BANK LIMITED , a company duly incorporated and registered in accordance with the Companies Act 71 of 2008 ("the Act"),

with registration number 1969/004763/06, having its registered address at 100 Grayston Drive, Sandown, Sandton, 2196.

1.2 The applicant is the proprietor, in South Africa, of various trade mark registrations in classes 9, 35, 36, 38 and 42.

1.3 Applicant is a specialist banking and wealth and investment services provider and has branded offices in the Channel Islands, Hong Kong, Ireland, Mauritius, South Africa, Switzerland, United Kingdom and the United States of America. It commenced trading in South Africa in 1974 and is listed on both the Johannesburg and London Stock Exchanges

1.4 The first respondent is CM INVESTECH (Pty) Limited, a company duly incorporated in terms of the Act, with registration number 2023/549046/07, and having its registered address at 71 Scott Street, Rustenburg, North West, 0299.

1.5 Second respondent is the Companies and Intellectual Property Commission ("CIPC"), an organ of state established in terms of Section 185 of the Act, having its principal place of business at DTI Campus, Block F, 77 Meinjies Street, Sunnyside, Pretoria, Gauteng. The second respondent is cited only in its official capacity as the custodian of the companies register and in so far as the relief in the prayers of applicant's Form CTR 142 is concerned.

2 BACKGROUND TO THE APPLICATION

2.1 This is an application for a default order determining, in terms of Section 160 of the Act, that:

- (i) the first respondent's company name, "CM INVESTECH (Pty) Limited

- does not satisfy the requirements of Sections 11 of the Act; and
- (ii) that first respondent be directed to change its name to one that is not confusingly similar to applicant's INVESTEC, as provided for in Section 160 (3)(b)(ii) of the Act.

2.2 It is submitted, on behalf of the applicant, that applicant tried to resolve the matter

with first respondent by email on various occasions, with no success.

2.3 Realising that first respondent had not changed its name nor had it responded to applicant's letters of demand, applicant approached the Companies Tribunal ("the Tribunal") for relief.

The stamped Form CTR 142 was served on the first respondent, electronically, within the prescribed 5 business days for such service .

2.4 After the expiry of the 20 day period without the first respondent filing an answering affidavit or changing its name, the applicant applied for a default order against the Respondent.

3. ISSUES TO BE DECIDED

3.1 The issue to be decided is whether first respondent has infringed Section 11 of the Companies Act and Section 34 of the Trade Marks Act 194/93. In making out its case for the order against the first respondent the applicant submits as follows:

3.1.1 The first respondent's name, "MC INVESTECH (Pty) Limited", does not satisfy the requirements of Section 11 of the Act and that the inclusion of the words "INVESTECH" in first respondent's name infringes applicant's registered trade mark.

3.1.2 Applicant's "INVESTEC" logo is prominently displayed on all its promotional material in public places and has been since

inception

in 1974. Therefore, the inclusion of “INVESTECH” in first respondent’s name would deceive the public into thinking that

there

is an association between the two companies, which is not the case.

3.1.3 Applicant submits that first respondent could damage applicant’s name and public image as applicant has no control over the quality of products or services that first respondent provides or is likely to provide.

3.1.4 Applicant seeks an order wherein:- (a) first respondent is ordered to change its name to one which does not incorporate the words “INVESTECH ” and is not confusingly and/or deceptively similar to the applicant’s name.

(b) in the event first respondent fails to comply with the order prayed for after 1 month, the second respondent change first respondent’s name to “K2023/549046/07”.

(c)costs of suit to be awarded against the first respondent as applicant tried to resolve the matter amicably without any success.

3.1.5 Applicant submits that the second part of first respondent’s name, “INVESTECH”, wholly incorporates the applicant’s trademark and is phonetically similar to applicant’s “INVESTEC”. It is therefore a trademark infringement that affects applicant's distinctive character and repute.

4. APPLICABLE LAW

4.1 **Section 11** of the Act provides as follows: “11. **Criteria for names of companies.** —

(1)...

(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), as a business name in terms of the Business Name Act, 1960 (Act No. 27 of 1960), unless he 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 Mark Act, 1993 (Act No. 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 No. 17 of 1941), except to the extent permitted by or in terms of that Act;*

(b) *not be confusingly similar to a name, trademark, 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;*

...

(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;”*

4.2 **Section 160** of the Act deals with **disputes concerning the reservation or registration of 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 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.**(emphasis added)*

(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 or use of the name, or the transfer of the reservation or 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 a company;

(cc) cancel the reservation 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 an 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 the 2011 Regulations provides for default orders as follows:

- (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.*
- (2) On such an application “the Tribunal may make an appropriate order-(a) after it has heard the required evidence concerning the motion, and (b) if it is satisfied that the notice or application was adequately served”*

4.4 **Section 34 (1) of the Trade Marks Act (Act 194/93)** which states that the rights acquired by the registration of a trade mark shall be infringed by-

- (a) The unauthorized use in the course of trade in relation to the goods or services in respect of which the trade mark is registered, of an identical mark or of a mark so nearly resembling it as to be likely to deceive or cause confusion;*
- (b) The unauthorized use of a mark which is identical or similar to the trade mark registered, in the course of trade in relation to goods or services which are similar to the goods or services in respect of which the trade mark is registered, that in such as there exists the likelihood of deception or confusion.*

5. ANALYSIS AND EVALUATION

- 5.1 It is evident from the diligent, but futile, efforts of the applicant to engage the first respondent on the matter that the applicant had no alternative but to proceed with the application for relief, hence the present default application. I am persuaded that the application of Regulation 153 is appropriate in this instance, and will thus proceed to deal with the matter on a default basis.
- 5.2 The question has to be asked whether the first respondent's name is confusingly similar to that of the applicant and, moreover, would third parties confuse the first respondent as part, associate, affiliate or subsidiary of the applicant. Applicant has established a good cause to bring the application in terms of section 160 of the Act and has also shown that first respondent's name is confusingly similar to applicant's INVESTEC, as submitted in paragraph 3 above.
- 5.3 Due to the evidence placed by the applicant before the Tribunal it is clear that applicant has a reputation to protect in the INVESTEC trade mark. This is further demonstrated by the due diligence with which applicant pursued the matter. Further, applicant's registration predates that of the first respondent by a few decades.
- 5.4 When the first respondent's name, CM INVESTECH, and the INVESTEC trade mark are used in the ordinary course of business, the average member of the public would likely assume that first respondent has some association with or affiliation to the Applicant, which is not the case.
- 5.5 Applicant has succeeded in establishing that its trade mark rights have been infringed by the first respondent and it has established a clear right to the relief sought in terms of Sections 34 (3)(a) and (b) of the Trade Marks Act and also Section 11(3) (b) and (c) of the Companies Act.
- 5.6 Dealing with the issue of Trade Marks infringement, In **Vermark (Pty) Ltd v**

BMW AG [2007] SCA 53 (RSA) paras 6-7, the SCA approved the view taken by the House of Lords in **R v Johnstone [2003] UKHL 28** (22 May 2003), wherein Lord Nicholls stated:

“...the essence of a trade mark has always been that it is a badge of origin. It indicates a trade source: a connection in the course of trade between the goods and the proprietor of the mark. That is its function.

5.7 The fact that there is CM before INVESTECH in first respondent's name does not alter the similarity in the two companies' names, especially phonetically.

6. FINDINGS

6.1 I am persuaded that the applicant has made out a case that the first respondent's name does not comply with Sections 11(2) (a) (b) and (c) of the Companies Act and Section 34 of the Trade Marks Act. Its name is confusingly similar and falsely implies, or could reasonably mislead a person to believe, incorrectly, that first respondent is part of or associated with the applicant.

6.2 In **Rovex Ltd and another v Prima Toys (Pty) Ltd 1981 (2) SA 447 (C)** (“Rovex”) it was stated as follows; *“...If a defendant uses an ordinary English word or words, there is no doubt the public will be less likely to regard it as a proprietary word and associate it with a similar word registered by the Plaintiff than would be if both words were invented words which had no meaning appropriate to the goods in question”.*

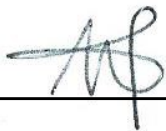
The dictum in Rovex is applicable in the instant case.

6.3 The application is granted the order as set out below.

7 ORDER

7.1 An administrative order is made in terms of Section 160(3)(b)(ii) as follows:

- (i) first respondent must change its name to one which does not consist of, or incorporate the trade mark “INVESTECH” or any other mark which is confusingly and/or deceptively similar to the applicant’s “INVESTEC” trade mark as it is in contravention of Sections 11(2)(b)(iii) and (c)(i) of the Act.
- (ii) The CIPC is authorised and directed to change the name of the first respondent to “K2023/549046/07 Ltd” in the event of the first respondent not complying with paragraph (i) above within 60 days from the date of receipt of this order.
- (iii) The first respondent must file a notice of amendment of its Memorandum of Incorporation with the CIPC 30 days after it has been served with this Order.
- (iv) The order must be served on the first respondent by the Tribunal’s Recording Officer (Registrar)
- (V) There is no order as to costs as the matter was unopposed.



N. CAWE: Member of the Companies Tribunal