



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02682ADJ2026**

In the matter between:

LEGATUM LIMITED

Applicant

and

LEGATUM ADVISORY SOLUTIONS (PTY) LTD

First Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Second Respondent

Presiding member: Richard Bradstreet

Date of decision: 3 June 2026

DECISION (Reasons and Order)

1. This application concerns a company name objection brought in terms of section 160 of the Companies Act 71 of 2008 (“the Act”), in which the Applicant seeks a determination that the First Respondent’s name does not satisfy the requirements of section 11 of the Act. The Applicant further seeks a default order in terms of regulation 153 of the Companies Regulations 2011, the First Respondent having failed to file an answering affidavit in response to the application.

2. The basis of the Applicant's objection is its rights in the well-known LEGATUM trade mark, of which it is the registered proprietor in South Africa in classes 35 and 41. Although the Applicant is a company incorporated in the United Arab Emirates, that is immaterial to the present enquiry: section 11 looks to the registered mark itself, and the foreign domicile of its proprietor has no bearing on the comparison.
3. The Applicant contends that the First Respondent's name incorporates the LEGATUM mark in its entirety, as its dominant element, and that such use is unauthorised. On that basis it submits that the name is the same as, alternatively confusingly similar to, its registered LEGATUM trade mark, and that it is likely to mislead members of the public into believing that the First Respondent is associated with, or forms part of, the Applicant's business – contrary to sections 11(2)(a), 11(2)(b) and 11(2)(c)(i) of the Act.
4. The application was duly filed with the Companies Tribunal during March 2026 and served on the First Respondent by electronic mail to the email address which the First Respondent had itself used for the receipt of correspondence in the course of the parties' earlier engagement. The First Respondent failed to file any answering affidavit within the prescribed time period.
5. The Applicant thereafter instituted an application for default judgment in terms of regulation 153. There has been adequate service, and thus compliance with regulation 153(2)(b). It also appears that the Applicant passes the "good cause" test, in that a reasonable explanation is given as to why the application should be heard by the Tribunal, and there has been no undue delay in bringing the application.

6. The application accordingly now falls to be determined on a default basis, and it is therefore necessary to consider whether the Applicant has made out a case for the relief sought.

APPLICABLE LEGAL FRAMEWORK

7. Section 160(1) of the Act provides that any person with an interest in the name of a company may apply to the Companies Tribunal for a determination whether the name satisfies the requirements of section 11.
8. Section 11(2) of the Act provides, *inter alia*, that a company name must not:
 - 8.1. be the same as a registered trade mark belonging to another person;
 - 8.2. be confusingly similar to such a trade mark; or
 - 8.3. 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 another person.

Confusing similarity

9. “Similar” in section 11(2)(b) means “having a marked resemblance or likeness” (*Bata Ltd v Face Fashions CC* 2001 (1) SA 844 (SCA) para 14).
10. Determining whether there is a confusing similarity involves a value judgment (*Cowbell AG v ICS Holdings* 2001 (3) SA 941 (SCA) para 10), and presupposing that the marks are to be used together in a normal and fair manner, in the ordinary course of business (*SmithKline Beecham Consumer Brands (Pty) Ltd (formerly known as Beecham South Africa (Pty) Ltd) v Unilever plc* 1995 (2) SA 903 (A) at 912H; cited in *Cowbell* supra at para 10).

11. In particular, one must ask whether there is “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 services of one are those of another or are connected therewith (*Adidas AG & another v Pepkor Retail Limited* 2013 BIP 203 (SCA) para 28; *Capital Estate and General Agencies (Pty) Ltd & others v Holiday Inns Inc & Others* 1977 (2) SA 916 (A) at 929C).
12. One must consider how the two marks will be perceived by the “ordinary reasonable careful man, i.e. not the very careful man nor the very careless man” (*Link Estates (Pty) Ltd v Rink Estates (Pty) Ltd* 1979 (2) SA 276 (E) at 280) bearing in mind that the comparison in the mind of such person will not be undertaken with the two marks presented side by side, and for this reason allowance must be made for the ordinary imperfections of human memory (i.e. the so-called “doctrine of imperfect recollection”; see *Ewing t/a The Buttercup Dairy Company v Buttercup Margarine Company Ltd* (1917) 34 RPC 232 at 232 and 238).

ANALYSIS

13. The mark in question is unlike a purely fanciful mark in that *legatum* is not a coined or invented word: it is derived from the Latin verb *legare* (to bequeath), and means *legacy* or *bequest*. That etymology does not, however, assist the First Respondent in so far as the distinctiveness of a mark must be assessed by reference to its significance to the relevant public in the market in which it is used, and not by reference to its origins in a language no longer in everyday use. To the ordinary South African consumer of the services in question, “LEGATUM” is not a familiar word of the English language and conveys no

descriptive meaning in relation to those services; it presents, rather, as a distinctive and memorable term.

14. More importantly, it is a term which the Applicant has registered as a trade mark in classes 35 and 41, and which it has used in South Africa since at least 2007 – most visibly in connection with its LEGATUM Prosperity Index – with the result that it has come to serve in this country as a badge of origin denoting the Applicant. In the South African context, therefore, and irrespective of its ancestry, “LEGATUM” falls to be treated as a distinctive mark consequently enjoying a strong measure of protection.

15. The comparison to be made must be made against that background. This involves a value judgment, made on the assumption that each will be used in a normal and fair manner in the ordinary course of business.

15.1. The First Respondent’s name, Legatum Advisory Solutions (Pty) Ltd, takes the Applicant’s mark in its entirety and unaltered, and places it in the dominant, opening position of the company’s name.

15.2. The words that follow it, “Advisory” and “Solutions”, are wholly descriptive of the rendering of advisory or consultancy services and contribute nothing of distinguishing value; far from displacing the mark, they read naturally as a description of what the bearer of the mark does.

15.3. The likeness between the mark and the First Respondent’s name is, in the result, not merely “marked”, but exact when considering the dominant element. That likeness is not dispelled by the descriptive words appearing after it, particularly bearing in mind that the

comparison is made not with the names placed side by side, but in the recollection of the ordinary reasonable careful person, whose recollection of the first mark encountered may be imperfect. Considered from a different perspective, if such a person were to first encounter the First Respondent's name, the words "Advisory Solutions" would likely be forgotten, with only the dominant and distinctive element "LEGATUM" being remembered.

16. It follows that there is a reasonable likelihood that ordinary members of the public, or a substantial section of them, would be confused or deceived into believing that the First Respondent is connected with the Applicant when no such connection exists.
17. The First Respondent's name is accordingly confusingly similar to the Applicant's LEGATUM trade mark, and also falsely implies or suggests an association with the Applicant. It therefore fails to satisfy the requirements of both sections 11(2)(b) and 11(2)(c)(i) of the Act.
18. The Applicant also relied upon section 11(2)(a) on the basis that the impugned name is *the same* as the Applicant's mark. That submission raises a question as to the relationship between the concepts of "sameness" and "confusing similarity" as they appear in section 11. The distinction between the two limbs of section 11(2)(a) and (b) is obscured if the concepts of sameness and confusing similarity are treated as though they shaded into one another. In my view, they should not. Although one may argue that two names are substantially the same, this inquiry is typically concerned with, *inter alia*, the form in which a member of the public perceived two marks. A name is the

same as a mark only where it is identical to it; a name is confusingly similar where, without being identical, its resemblance gives rise to a likelihood of deception or confusion.

19. Whilst a name that is the same as another will necessarily also be confusingly similar to it, the converse does not hold: similarity short of being identical is the larger category, within which identity is the limiting case. To treat sameness as though it were established by a high degree of similarity is therefore to collapse the lesser test into the greater and to deprive the statutory language of its evident structure.
20. That the legislature provided for both is, on this analysis, readily explicable rather than redundant. The prohibition upon names that are the same as a mark or another name ensures that an *identical* company name does not escape scrutiny on the basis that the only standard imposed by the section is one of similarity; it prevents the argument from being raised that being identical is something other than similarity, and therefore falls outside the prohibition. Each limb thus performs distinct work, and a literal reading gives effect to that division.

COSTS

21. The Applicant has expressly sought costs. The Tribunal's ordinary practice on default applications of this kind is to make no order as to costs, particularly where the First Respondent appears to have adopted the impugned name without malice and where the matter is determined on an unopposed basis without the need for a hearing. I am reluctant to award costs in the present

matter given that the First Respondent has not had any opportunity to make representations in relation to the issue.

ORDER

22. In the result, I make the following order:

- (a) The application for default relief is granted.
- (b) The First Respondent is directed to:
 - (i) change its name to one which does not incorporate “LEGATUM” or any confusingly similar word, and
 - (ii) file a notice of amendment to its Memorandum of Incorporation within 3 (three) months of the date of this order.
- (c) In the event that the First Respondent fails to comply with paragraph (b) above, the Second Respondent is directed to substitute the First Respondent’s registration number as its interim company name.

Richard Bradstreet

Member of the Companies Tribunal

3 June 2026