

**IN THE COMPANIES TRIBUNAL REPUBLIC OF SOUTH AFRICA**

**Case number:** CT02533ADJ2025

**In the matter between:**

**ASPEN PHARMACARE HOLDINGS LTD.**

(Registration number: 1985/002935/06)

And

**APPLICANT**

**SIYATHEMBA PHARMACARE (PTY) LTD.**

(Registration No. 2025/444256/07)

**FIRST RESPONDENT**

**THE REGISTRAR OF COMPANIES**

**SECOND RESPONDENT**

Coram: Nomagcisa Cawe

Date of Decision: 25 June 2026

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**DECISION AND REASONS**

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**THE PARTIES**

1. The Applicant is ASPEN PHARMACARE HOLDINGS LIMITED (“the Applicant”), a private company registered in accordance with the company laws of South Africa under registration number 1985/002935/06 with its registered address at Building Eight, Healthcare Park, Woodlands Drive, Gauteng, 2148. The applicant is the parent company to more than 11 subsidiary companies globally.
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2. The first respondent is SIYATHEMBA PHARMACARE (PTY) LIMITED (“the first respondent”), a private company registered under the company laws of South Africa under registration number 2025/444256/07, and with its registered address at 414 Unison Flat, 89 Vlok Street, Sunnyside, Pretoria, 002.
3. The second respondent is the registrar of the Companies and Intellectual Properties Commission (“CIPC”), with its registered address at the DTIC Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria. The second respondent is cited only for notice Purposes, unless it opposes this application.

## **THE APPLICATION**

4. This is an application in terms of sections 160 read with section 11(2) of the Companies Act, 71 of 2008 (“the Act”), and Regulation 142 of the 2011 Companies Regulations.
5. The applicant contends that the name “SIYATHEMBA PHARMACARE” is confusingly similar to the applicant’s registered trademark “ASPEN PHARMACARE HOLDINGS”, and falsely implies an association with the applicant. The matter is unopposed and the applicant has filed an application for a default order. From the papers placed before me, as far as service of the documents is concerned, it appears that regulation 153 has been complied with, as per the proof of service that was lodged with the Tribunal on 17 December 2025. The matter will, therefore, proceed on a default basis.

## **THE APPLICANT’S SUBMISSIONS**

6. Applicant’s representative submitted as follows:-
  - 6.1 Aspen is a multinational pharmaceutical company with a presence in both emerging and developed markets. Aspen focuses on the manufacture and distribution of a broad range of products including steriles, oral solid dose, liquids, semi-solids biologicals and APIs; and

- 6.2 applicant's continuous and extensive use of its well-known ASPEN PHARMACARE trademark deserves protection under the Trademarks Act and that unrelated third parties are not allowed to use the trademark.
7. Applicant's representative submitted further that the first respondent's registration of the company name, SIYATHEMBA PHARMACARE, is in conflict with the provisions of sections 11(2)(a)(i) and (iii), and 11(2)b(i) of the Companies Act in that:-
- (i) The dominant and most memorable part of the first respondent's company name is the "PHARMACARE" element which is visually, phonetically and conceptually identical to the Applicants registered PHARMACARE Trade Mark. The use of the additional words "SIYATHEMBA" is descriptive and does not negate the possibility of confusion or deception;
  - (ii) the fact that the applicant's PHARMACARE Trade Mark is so well known in South Africa through the services offered and products supplied to most pharmaceutical retailers across South Africa, that members of the public could assume the first respondent to be associated with the applicant;
  - (iii) the first respondent has failed to specify its trading activities which increases the likelihood of the first respondent's activities could expand and conflict with the trading activities of the applicant;
  - (iv) The applicant is therefore entitled to the relief afforded to any person with an interest in the registered name under sections 160(1), (2)b and (3)(b)(ii) of the Companies Act, in the form of an administrative order directing the first respondent to choose a new company name within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances.

- (v) The first respondent is not in any way connected to the applicant and the first respondent is not authorized to use the applicant's PHARMACARE Trade Mark or a confusingly similar version thereof.

## **THE RELIEF SOUGHT**

8. The applicant prays for the following order:-
- (i) ordering the first respondent to change its company name to one which does not incorporate or is not confusingly similar to the PHARMACARE Trade Mark;
  - (ii) in the event that the first respondent fails to comply with the order contained in paragraph (i) above, within thirty (30) days of the Tribunal's decision herein, ordering the second respondent to change the first respondent's company name to  
its registration number, ( 2025/444256/07);
  - (iii) ordering the first respondent to pay the costs of this application; and
  - (iv) further and/or alternative relief.

## **LEGAL FRAMEWORK AND ANALYSIS**

9. Section 160(1) of the Companies Act 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 this Act."* (My emphasis)

10. It is clear from the applicant's submissions that applicant has an interest in the first

respondent's name, within the meaning of Section 160 of the Companies Act which name the Tribunal accepts wholly incorporates the applicant's PHARMACARE trade mark.

11. Section 160(2)(b) of the Companies Act provides that:

*"An application in terms of subsection (1) may be made ... 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." (My )*

12. The applicant has established a good cause for the application, considering the applicant owns the rights in the name and trade mark **PHARMACARE** and that various associated companies using the name and trade mark in relation to trading activities, services and goods, have done so and continue to do so with the authority and under the control of the applicant in that mark. The applicant's representative has given elaborate illustration of how extensive the applicant's trade mark is used in five continents, and has been since 1985.

13. Sections 11(2)(a), (b) and (c) of the Companies Act, as far as they are applicable, read as follows:

*"(2) The name of a company must-*

*a not be the same as -...*

*(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 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.*

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 authorized by the registered owner to use it; or 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.*

14. In the present case, the focus is not on whether the two names are identical, but whether the first respondent's name would falsely imply or suggest an association with the applicant, as submitted by applicant's representative in his founding papers. In *Bata Ltd v Face Fashions CC 2001(1) SA*

*844 (SCA)*, the court held that a mark is confusingly similar if it has a "marked

resemblance or likeness", and that is particularly so when the dominant portion

of the mark is replicated.

15. There is no indication in the papers before the Tribunal that applicant has given

permission to the first respondent to use the PHARMACARE trade mark in line

with section 11(b)(iii). The use of the PHARMACARE trade mark is, therefore

an infringement by the first respondent, which was only registered in August 2025 as opposed to applicant's registration in 1985.

16. I agree with the applicant's representative's submission in paragraph 7.7.3 of the founding affidavit that first respondent's name, when considered as a whole may reasonably deceive or confuse the average customer and/or members of the public into thinking the first respondent is the applicant, or is part of or associated with the applicant, to the applicant's detriment.

17. Dealing with the issue of trade mark infringement, In **Vermark (Pty) Ltd v BMW AG [2007] SCA 53 (RSA) paras 6-7**, the SCA accepted the view taken by the House of Lords in **R v Johnstone [2003] UKHL 28**, where 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"

18. The applicant has succeeded in establishing a clear right to the PHARMACARE trade mark, in its submissions, under section **34(3)(a) of the Trade Marks Act**.

## **FINDINGS**

19. I find that the applicant has shown it has an interest in the first respondent's name, and good cause to bring this application under section 160(2) of the Companies Act.

20. I am persuaded that the applicant has made out a proper case that the first

respondent's name is confusingly similar to the applicant's PHARMACARE trade mark to the extent that it falsely implies or suggests, or would reasonably

mislead a person to believe incorrectly, that the first respondent is part of, or associated with the applicant, in contravention of section 11(2)(b) and (c) of the Companies Act.

21. Of particular significance, regarding the trade mark infringement, is the submission made by applicant's representative in paragraph 7.7.4 of the founding affidavit, that the first respondent has failed to specify its trading activities which increases the likelihood that the first respondent's activities could expand and conflict with the trading activities of the applicant. This would be detrimental to the long standing trade mark of the applicant. As such, applicant deserves the protection available within the jurisdiction of the Tribunal.

22. The urgency and diligence with which the applicant pursued the matter shows how important the protection of its trade mark is to the applicant. The applicant became aware of the registration of the first respondent's company in August 2025 and on 16 August emailed the first respondent with the view of settling the matter outside the Tribunal.

## **ORDER**

23. Accordingly, I make the following administrative order, in terms of section 160(3)(b)(iii) and (c)(i) of the Act:-

- 23.1 The first respondent is directed to change its name to one which does not incorporate, and is not confusingly and/ or deceptively similar to applicant's PHARMACARE trade mark.
- 23.2 The first respondent is directed to file a notice of an amendment of its Memorandum of Incorporation, within thirty (30) days of receipt of this order.
- 23.3 The second respondent, in the event that the first respondent fails to comply with the order contained in paragraph (1) above within thirty (30) days of receipt of this decision, is ordered to change the first respondent's company name to its registration number, (2025/444256/07 (Pty) Ltd”).
- 23.4 The Registrar of the Tribunal must serve this ruling on the first and the second respondents within five business (5) days of the date of this order.
- 23.5 There is no order as to costs as the matter was unopposed.

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Nomagcisa Cawe: Member of the Companies Tribunal