



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT01895/ADJ/2024

In the matter between:

KAP (LIMITED)
(1978/000181/06)

Applicant

and

KAP POWER ENERGY (PTY) LIMITED
(2023/935927/07)

First Respondent

COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)

Second Respondent

Presiding Member of the Companies Tribunal: N. CAWE

Date of Decision: 28/07/ 2026

DECISION (Reasons and Order)

1. INTRODUCTION

- 1.1. The Applicant is KAP LIMITED, a company duly incorporated and registered in accordance with the Companies Act 71 of 2008 ("the Act"), with registration

number 1978/000181/06 with its registered address at 3rd Floor, Building 2, The Views, Founders Hill Office Park 18 Centenary Street, Modderfontein, Gauteng 1645.

1.2. The Applicant is the proprietor, in South Africa, of several trade marks incorporating the trade mark “KAP”. It has trade mark registrations, *inter alia* in categories: 35, 39 and 42. These trademarks were registered between 2017 and 2022 and are listed above according to date of registration. The company operates in 11(eleven) sub- Saharan African countries, as well as Australia. The Applicant’s business interests are highly diversified and include, but are not limited to, polymer manufacture, logistics, consumer transport, automobile component manufacture, bedding and timber.

1.3 The First Respondent is KAP POWER ENERGY (Pty) Ltd, a company duly incorporated in terms of the Act, with registration number 2023/935927/07, and having its registered address at : 22 Empire Road, Park Town, Johannesburg, Gauteng Province.

1.4 The 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 Meinjties Street, Sunnyside, Pretoria, Gauteng. The Second Respondent is cited only in its official capacity as the custodian of the companies register, and no relief is sought against it unless it opposes this application.

2 BACKGROUND TO THE APPLICATION

2.1 This is an application for a Default Order determining, in terms of Section 160 of the Act and Regulation 153 of the 2011 Regulations that:

- (i) the First Respondent’s company name, ‘KAP POWER ENERGY (Pty) Ltd does not satisfy the requirements of Sections 11 of the Act; and

- (ii) that First Respondent should be directed to change its name as provided for in Section 160 (3)(b)(ii) of the Act.
- 2.2 According to Chris-Marie Beegte (Beegte), the Secretarial Manager at the Applicant company, in her Founding Affidavit, the existence of the First Respondent first came to the attention of the Applicant, in October 2023, when the Applicant's attorneys (Moore Attorneys Incorporated) conducted a complementary search of the Companies Register in order to identify possible infringements of the Applicant's KAP trademark.
- 2.3 Applicant's Attorneys addressed a letter of demand to First Respondent to the registered email address obtained from the CIPC (balesbulky@gmail.com) requesting First Respondent to voluntarily apply to the CIPC to change its name to one which does not incorporate the trademark "KAP" or one that is confusingly similar thereto. A text message was also sent to the cell number reflected in the Incorporation documents. No response was received from First Respondent.
- 2.7 Upon not receiving a response from First Respondent, the Applicant approached the Companies Tribunal for relief and duly lodged Form CTR142, together with Beegte's Founding Affidavit and proof of the company's registration status and categories of registration, through its attorneys.
- 2.8 The application was served, on the First Respondent by email to balesbulky@gmail.com and on the Second Respondent, via email, to Corporatelegalservices@cipc.co.za.
- 2.9 First Respondent did not file an answering affidavit within the statutory twenty (20) business days following which, on 31 July 2026, Applicant applied for a Default Order on Form CTR 145.
- 2.10 Shane Peter Moore (Moore), the Managing partner at Moore Attorneys Incorporated, deposed to the affidavit in support of the Default Order application, on 31 July 2026.

3. APPLICANT'S SUBMISSIONS

- 3.1 Applicant requests the Tribunal to make a finding that First Respondent's name, "KAP POWER ENERGY(Pty) Ltd", does not satisfy the requirements of Section 11 of the Act and submits that the inclusion of the words "KAP" in First Respondent's name infringes on Applicant's registered trade mark and is in violation of Section 34 of the Trade Marks Act 194/93 ("the Trade Marks Act).
- 3.2 In view of the above, Applicant seeks an order wherein First Respondent is directed to change its name to one which does not incorporate the word "KAP" and is not confusingly and/or deceptively similar to the Applicant's name, should the Tribunal find that there is a violation of the Trade Marks Act.
- 3.3 Applicant's representative contends that the dominant and memorable part of First Respondent's name is identical to the Applicant's "KAP" trademark, and that the remaining portion of First Respondent's name, "POWER ENERGY", although purely descriptive, does not serve adequately to distinguish it from Applicant's well known "KAP" trademark. First Respondent's name is, according to the Applicant's representative, confusingly and deceptively similar to Applicants' registered KAP trade mark.

4. APPLICABLE LAW

The following statutes are relevant to the present application:

- 4.1 **Section 11** of the Act which 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 2011 Regulations which 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. EVALUATION

- 5.1** The First Respondent has failed to answer Applicant’s claim or remove the trademark “KAP” from its company name, despite being so requested by the Applicant. Subsequent to the non-action by the First Respondent to

Applicant's request, Applicant's attorneys applied for relief to the Tribunal, which request is hereby being evaluated.

- 5.2 The question that has to be asked is 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 or subsidiary of the Applicant.
- The answer, would be in the affirmative.

- 5.3 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"

- 5.4 The Applicant has clearly succeeded in establishing that its trade mark rights have been infringed and that it has the sole right to the KAP trade mark under Section 34 (3)(a) of the Trade Marks Act. Significantly, Applicant's registration of the KAP trade mark predates that of the First Respondent by more than two decades.

5.5 I am in agreement with Applicant's representative that the dominant and memorable feature of the First Respondent's company name is the word "KAP". It is not only visually, but it is also phonetically identical Applicant's registered "KAP" trade mark. The mere addition of "POWER ENERGY" is not sufficient to distinguish the First Respondent's name from Applicant's registered trade mark or to avoid confusion in the market place.

5.6 Taking into consideration the above evaluation, it can therefore, be concluded that the word "KAP" in First Respondent's name would mislead the reasonable person to believe, incorrectly, that there is an association between the two companies.

6. FINDINGS

6.1 The Applicant's representative has placed extensive evidence before the Tribunal demonstrating the longstanding and substantial reputation attaching to the KAP mark, both internationally and in South Africa. There is also plenty evidence submitted that Applicant has a direct interest in the name of the First Respondent and that the present application is s justified.

6.2 In the absence of any explanation from the First Respondent, there is no basis to conclude that its adoption of the KAP trade mark was coincidental or that it would not give rise to a likelihood of confusion.

6.3 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”*.

6.4 I am of the view that the dictum in Rovex is applicable in the instant case, and am persuaded that the Applicant has made out a case that First Respondent's name is confusingly similar to that of the Applicant, in contravention of section 11 of the Act.

6.5 The Applicant has established its entitlement to the relief sought on a balance of probabilities. It is, therefore, appropriate to grant a default order in terms of regulation 153 as the matter was unopposed despite compliance with the Regulations by the Applicant party.

7. ORDER

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

(i) Respondent must change its name to one which does not consist of, or incorporate the trade mark 'KAP' or any other mark which is confusingly and/or deceptively similar to the Applicant's 'KAP' trade mark, as it contravenes 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, in the event of the First Respondent not complying with paragraph (i) above within 60 days from the date of receipt of this order, to "2023/935927/07 (Pty) Ltd" as the First Respondent's interim company name on the companies register "

7.2 The Respondent is hereby ordered to file a notice of amendment of its Memorandum of Incorporation with the CIPC 60 days after it has been served with this Order.

7.3 The instant Order must be served on the Respondent by the Tribunal's Recording Officer (Registrar)

7.4 There is no order as to costs as the matter has not been opposed.

Nomagcisa Cawe:

Member of the Companies Tribunal