



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02731ADJ2026

In the matter between:

PANDA RESTAURANT GROUP, INC

APPLICANT

And

**PANDA EXPRESS (PTY) LTD
(2025/917603/07)**

FIRST RESPONDENT

THE REGISTRAR OF COMPANIES

SECOND RESPONDENT

Presiding Member of the Companies Tribunal: DR MINAH TONG-MONGALO

Date of Decision: 18 August 2026

DECISION (Reasons and an Order)

A. INTRODUCTION

[1] This is an application by Panda Restaurant Group, Inc (the Applicant) in terms of section 160(1) of the Companies Act 71 of 2008 (the Act) for a

determination that the company name PANDA EXPRESS (PTY) LTD does not satisfy the requirements of section 11 of the Act.¹

[2] The Applicant relies principally on its registered South African PANDA EXPRESS word mark and PANDA EXPRESS device mark. It submits that the First Respondent's name is the same as, or confusingly similar to, its marks and falsely implies or suggests an association with the Applicant.²

[3] The First Respondent has not opposed the application. The Applicant accordingly seeks relief on a default basis under regulation 153 of the Companies Regulations, 2011 (the Regulations).

B. THE PARTIES

[4] The Applicant is Panda Restaurant Group, Inc, a corporation duly incorporated under the laws of the State of California, United States of America, with its principal place of business at 1683 Walnut Grove Avenue, Rosemead, California 91770, United States of America.

[5] The First Respondent is Panda Express (Pty) Ltd, a private company incorporated in the Republic of South Africa on 25 November 2025 under registration number 2025/917603/07, with its registered address at 545 John Scott Street, Constantia Park, Pretoria, Gauteng, 0001. Its sole director is recorded as Mr Martin Kirwa.³

[6] The Second Respondent is the Companies and Intellectual Property Commission (the Commission), established in terms of section 185 of the Act, with its principal office at the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

¹ Companies Act 71 of 2008, section 160(1).

² Companies Act 71 of 2008, sections 11(2)(a)(iii), 11(2)(b), 11(2)(c)(i) and 160(3)(b)(ii).

³ Founding affidavit of David Landsberg, paragraphs 8-13 and annexure DL1.

C. PROCEDURAL HISTORY AND DEFAULT

- [7] The initiating application in Form CTR 142 was filed with the Tribunal on 5 May 2026. It is supported by the founding affidavit of Mr David Landsberg and the supporting affidavits of Mr John Henry Foster and Ms Nishaat Slamdien.⁴
- [8] The initiating application was served on the First Respondent on 6 May 2026 via email (martinkirwa47@gmail.com) with proof of delivery attached. The Second Respondent on 6 May 2026 via email (corporatelegalservices@cipc.co.za) with proof of delivery attached.
- [9] In terms of regulation 143, the First Respondent was required to deliver an answer within 20 business days after being served, at namely 4 June 2026. No answer was delivered.
- [10] On 10 June 2026 the Applicant filed Form CTR 145 and applied for a default order.
- [11] Regulation 153 permits the Tribunal to make an appropriate order after considering the necessary evidence, provided that the initiating document was adequately served. I am satisfied that the application came to the First Respondent's attention and may properly be decided on a default basis.⁵

D. THE APPLICANT'S RIGHTS AND EVIDENCE

- [12] The Applicant is the registered proprietor in South Africa of word mark number 2013/32342 PANDA EXPRESS in class 43 for restaurant services. The application date was 19 November 2013, the mark was registered on 9 May 2017, and its current term expires on 19 November 2033.⁶

⁴ Companies Regulations, 2011, regulations 142, 143 and 153.

⁵ Companies Regulations, 2011, regulation 153(1)–(2); *RCL Foods Consumer (Pty) Ltd v Africans Rainbow Chickens (Pty) Ltd and Another* (CT01480ADJ2023) [2024] COMPTRI 5 (9 January 2024) at paragraphs 12–13.

⁶ Founding affidavit, paragraph 19.1 and annexure DL3.

- [13] The Applicant is also the registered proprietor of device mark number 2013/32360, incorporating the words PANDA EXPRESS, in class 43. That mark was applied for on 19 November 2013, registered on 9 May 2017 and remains current until 19 November 2033.⁷
- [14] Both registrations substantially pre-date the First Respondent's incorporation. The endorsements recording that no exclusive rights are granted in the word EXPRESS separately do not diminish the Applicant's rights in the composite mark PANDA EXPRESS as a whole.
- [15] The Applicant has also filed South African trade mark applications 2022/17704 PANDA EXPRESS and 2022/17703 for its device mark in class 43. Those applications are additional context, but the registered word mark is sufficient to determine this dispute.⁸
- [16] The uncontroverted evidence describes the Applicant as the parent of the Panda Express restaurant business, founded in 1983, with a substantial international restaurant footprint and an online presence under the PANDA EXPRESS brand.⁹
- [17] The Applicant became aware of the First Respondent on 15 December 2025. Its attorneys sent a written demand on 22 January 2026 requiring the First Respondent to change its company name. On 4 February 2026 Mr Kirwa responded in terms which Mr Foster reasonably understood as an acceptance that the name would be changed, but he thereafter failed to confirm or effect the change despite follow-up communications.¹⁰
- [18] There is no evidence that the Applicant consented to the registration or use of the First Respondent's name, and the First Respondent has put forward no explanation for its adoption.

⁷ Founding affidavit, paragraph 19.2 and annexure DL4.

⁸ Founding affidavit, paragraphs 15-18 and annexure DL2.

⁹ Founding affidavit, paragraphs 21-30 and annexures DL6-DL10; supporting affidavit of Nishaat Slamdien, paragraphs 3-8.

¹⁰ Supporting affidavit of John Henry Foster, paragraphs 3-13; founding affidavit, paragraphs 34-35 and annexure DL12.

E. THE APPLICABLE LAW

- [19] Section 11(2)(a)(iii) provides, subject to exceptions not relevant here, that a company name must not be the same as a registered trade mark belonging to a person other than the company.¹¹
- [20] Section 11(2)(b) further provides that a company name must not be confusingly similar to a name, trade mark, mark, word or expression contemplated in section 11(2)(a), unless an applicable statutory exception is established. No such exception has been established here.¹²
- [21] Section 11(2)(c)(i) prohibits a name that falsely implies or suggests, or would reasonably mislead a person to believe incorrectly, that the company is part of or associated with another person or entity.¹³
- [22] A person with an interest in a company name may apply to the Tribunal for a determination whether the name satisfies section 11. An application may be made on good cause shown and the Tribunal may order the company to choose, and file a notice of amendment to its Memorandum of Incorporation reflecting, a new name that satisfies the Act.¹⁴
- [23] The assessment of confusing similarity is a matter of first impression and the marks or names must be considered globally and in context, having regard to their main features and the recollection of the likely consumer.¹⁵
- [24] The fact that two names or marks are not literally identical does not end the enquiry. The dominant and memorable elements, and the overall idea conveyed by them, remain central.¹⁶

¹¹ Companies Act 71 of 2008, section 11(2)(a)(iii).

¹² Companies Act 71 of 2008, section 11(2)(b), read with section 11(2)(a)(iii).

¹³ Companies Act 71 of 2008, section 11(2)(c)(i).

¹⁴ Companies Act 71 of 2008, sections 160(1), 160(2) and 160(3)(b)(ii).

¹⁵ *Cowbell AG v ICS Holdings Ltd* 2001 (3) SA 941 (SCA), paragraph 10; *Yuppiechef Holdings (Pty) Ltd v Yuppie Gadgets Holdings (Pty) Ltd* [2016] ZASCA 118, paragraph 26.

¹⁶ *Polaris Capital (Pty) Ltd v Registrar of Companies and Another* 2010 (2) SA 274 (SCA), paragraphs 15, 18, 19 and 23; *Bata Ltd v Face Fashions CC* 2001 (1) SA 844 (SCA), paragraphs 9-10.

[25] The First Respondent's default does not entitle the Applicant to relief automatically. The Tribunal must still be satisfied that the evidence establishes the statutory contravention and that the proposed order is appropriate.¹⁷

F. ANALYSIS

[26] The comparison is straightforward. The First Respondent's name comprises the Applicant's entire registered word mark PANDA EXPRESS, followed only by the corporate-form suffix (Pty) Ltd.

[27] That suffix performs a statutory descriptive function and does not distinguish the First Respondent from the Applicant's trade mark. Nor does the disclaimer of exclusive rights in EXPRESS separately assist the First Respondent: it has adopted the protected composite PANDA EXPRESS in full.

[28] For purposes of section 11(2)(a)(iii), the addition of (Pty) Ltd does not alter the identity of the distinctive name. I find that PANDA EXPRESS (PTY) LTD is the same as the Applicant's registered PANDA EXPRESS word mark in the sense contemplated by the section.

[29] In any event, and at the least, the names are confusingly similar under section 11(2)(b). The whole of the Applicant's mark is reproduced, in the same order and without any distinguishing verbal matter. A person encountering the First Respondent's name would naturally understand PANDA EXPRESS to be its source-identifying element.

[30] The same facts establish a contravention of section 11(2)(c)(i). The First Respondent's name is likely to suggest that it is the South African company, affiliate, licensee or other authorised undertaking of the Applicant's PANDA EXPRESS restaurant business. That suggestion is false on the evidence before me.

¹⁷ Companies Regulations, 2011, regulation 153(2)(b).

- [31] The Applicant's pending trade mark applications and the evidence of its international operations reinforce the conclusion, but the result does not depend on a finding that the mark is famous or well known in South Africa. The registered word mark, the identity of the dominant wording and the absence of consent are decisive.
- [32] The Applicant has also shown good cause. Its registered rights pre-date the First Respondent's incorporation by several years; it acted shortly after discovering the company; it first sought a voluntary resolution; and it approached the Tribunal only after the First Respondent failed to carry through the proposed change.¹⁸
- [33] I accordingly find that the First Respondent's name does not satisfy sections 11(2)(a)(iii), 11(2)(b) and 11(2)(c)(i) of the Act.

G. DEFAULT RELIEF AND COST

- [34] The evidential allegations material to the dispute are uncontroverted and, subject to the adequate-service finding recorded above, the requirements for default relief have been met.
- [35] The appropriate substantive remedy is to require the First Respondent to choose and register a compliant name within 60 business days after service of this order. The period is sufficient to permit the necessary corporate and Commission filings and provides a clear date for compliance.
- [36] Section 160(5), in force from 27 December 2024, requires an administrative order under section 160(3)(b)(ii) to stipulate a compliance date. If the company does not comply by that date, the successful applicant may approach the Commission to substitute the company's name with its registration number followed by the applicable corporate suffix.¹⁹

¹⁸ Founding affidavit, paragraphs 31-36; supporting affidavit of John Henry Foster, paragraphs 3-13.

¹⁹ Companies Act 71 of 2008, section 160(5), inserted by section 14 of the Companies Amendment Act 16 of 2024 and effective from 27 December 2024.

[37] The Applicant seeks costs. Regulation 156 permits the Tribunal to make a costs order. The First Respondent was given a reasonable opportunity to change its name, appeared to accept that it would do so, and then failed to act or engage substantively, making these proceedings necessary. In those circumstances, a costs order is justified.²⁰

H. ORDER

[38] I make the following order:

- 38.1 The First Respondent's company name, PANDA EXPRESS (PTY) LTD, does not satisfy the requirements of sections 11(2)(a)(iii), 11(2)(b) and 11(2)(c)(i) of the Companies Act 71 of 2008.
- 38.2 The First Respondent is directed, within 60 business days after service of this order, to choose a new name which does not incorporate PANDA EXPRESS and which otherwise satisfies section 11 of the Act.
- 38.3 Within the same period, the First Respondent must file the prescribed notice of amendment to its Memorandum of Incorporation with the Second Respondent reflecting its new name.
- 38.4 If the First Respondent fails to comply within the period stipulated in paragraph 38.2, the Applicant may approach the Second Respondent in terms of section 160(5)(b) of the Act to substitute the First Respondent's name with its registration number followed by (Pty) Ltd.
- 38.5 The Recording Officer of the Tribunal is directed to serve this decision and order on the Applicant and the Respondents.
- 38.6 The First Respondent is ordered to pay the Applicant's costs on the party-and-party scale, as taxed or agreed.

Dr MINAH TONG-MONGALO
MEMBER OF THE COMPANIES TRIBUNAL

²⁰ Companies Regulations, 2011, regulation 156.