



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02845ADJ2026**

In the matter between:

SUN INTERNATIONAL (SOUTH AFRICA) LIMITED

Applicant

And

TIMES SQUARE HOTEL (PTY) LTD

First Respondent

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Second Respondent

Presiding member: Richard Bradstreet

Date of decision: 1 September 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 Applicant, Sun International (South Africa) Limited ("**SISA**"), is a public company incorporated under the laws of the Republic, with its registered office at 6 Sandown Valley Crescent, Sandown, Sandton. It is a wholly-owned subsidiary of Sun International Limited and forms part of the Sun International Limited group, which develops and operates casinos, hotels and entertainment complexes in South Africa and elsewhere. Among the Applicant's operations is its TIME SQUARE casino and entertainment complex at Menlyn Maine, Pretoria, which opened in April 2017, and within which the Applicant operates a hotel that, on 5 February 2026, was renamed from "The Maslow Time Square" to "Time Square Hotel".
3. The First Respondent is Times Square Hotel (Pty) Ltd, a company incorporated on 19 August 2024 under registration number 2024/511356/07, with its registered office at 25 Zenith Drive, Umhlanga, Durban. Its principal business is not disclosed on the register.
4. The Second Respondent is the Companies and Intellectual Property Commission ("**the Commission**"), the entity responsible for the registration of

companies and the maintenance of the companies register. The Applicant joins the Commission only in so far as the consequential relief in paragraph 3 of its notice of motion is concerned, and seeks no costs against it.

5. The basis of the objection is that the First Respondent's name is confusingly similar to, and wholly incorporates, the Applicant's registered and well-known TIME SQUARE trade mark, and that the name falsely implies or would reasonably mislead a person into believing that the First Respondent is associated with the Applicant. The objection is founded on sections 11(2)(a), 11(2)(b) and 11(2)(c)(i) of the Act.

DEFAULT RELIEF

6. The Main Application was filed on 13 July 2026 and the Tribunal allocated case number CT02845ADJ2026 to the matter on that date. On 13 July 2026 the Applicant's attorneys served a copy of the application on the First Respondent by e-mail, addressed to the electronic addresses recorded for the First Respondent and its director, and copied the Commission. On 15 July 2026, the Deputy Sheriff for Inanda District 2 served a copy of the application at the First Respondent's registered office at 25 Zenith Drive, Umhlanga, by delivering it to a person apparently in charge of the premises, as reflected in the return of service dated 16 July 2026.

7. The Sheriff recorded that the person served advised that the First Respondent was unknown at the address and that the premises were presently occupied by another business. That does not detract from the adequacy of the service. Service at a company's registered office is service duly effected, and a company that records an address at which it cannot be found bears the consequences of having done so. In any event, the papers were also transmitted electronically to the addresses recorded for the First Respondent and its director, and the founding papers disclose a sustained course of correspondence and telephonic engagement with the director, Ms Dorpathy Singh, between September 2025 and March 2026, during the course of which the First Respondent was repeatedly called upon to change its name. The First Respondent clearly had knowledge of the Applicant's objection.
8. In terms of regulation 143, the First Respondent had until 13 August 2026 to serve and file an answer. It did not do so. The Applicant filed its application for a default order on 19 August 2026. I am satisfied that 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. The matter may therefore be determined on the papers, and on a default basis.

APPLICABLE LEGAL FRAMEWORK

9. Section 160(1) of the Act provides that a person with an interest in the name of a company may apply to the Tribunal for a determination whether the name satisfies the requirements of the Act. The Applicant, as the proprietor of the registered TIME SQUARE trade mark and of a substantial reputation in that mark, plainly has such an interest. In terms of section 160(2)(b), such an application 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”, and, for the reasons given above, good cause has been shown.
10. Section 11(2) of the Act provides, so far as is relevant, that the name of a company must –
- (a) not be the same as 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, or a well-known trade mark as contemplated in section 35 of the Trade Marks Act 194 of 1993 (section 11(2)(a)(iii));
 - (b) not be confusingly similar to such a mark (section 11(2)(b)); and
 - (c) not 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, any other person or entity (section 11(2)(c)(i)).

Confusing similarity

11. “Similar”, for the purposes of section 11(2)(b), means “having a marked resemblance or likeness” (*Bata Ltd v Face Fashions CC* 2001 (1) SA 844 (SCA) para 14). The comparison of a company name with a trade mark involves a value judgment, and the marks are to be considered as they would be encountered in normal and fair use in the ordinary course of business (*Cowbell AG v ICS Holdings Ltd* 2001 (3) SA 941 (SCA) para 10; *SmithKline Beecham Consumer Brands (Pty) Ltd v Unilever plc* 1995 (2) SA 903 (A) at 912H).
12. The test is 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, services or business of the one are those of, or are connected with, the other (*Adidas AG v Pepkor Retail Ltd* (187/12) [2013] ZASCA 3; 2013 BIP 203 (SCA) para 28; *Capital Estate and General Agencies (Pty) Ltd v Holiday Inns Inc* 1977 (2) SA 916 (A) at 929C).
13. The comparison is made through the eyes of the notional ordinary customer of the goods or services in question, who is possessed of imperfect recollection and who is not engaged in a careful side-by-side analysis, and account must be taken of the class of persons likely to be the customers of the goods or services concerned (*Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA*

(Pty) Ltd 1993 (2) SA 307 (A) at 315F–G). The onus of establishing the objection rests on the Applicant (*Bata supra* para 8).

ANALYSIS

14. The Applicant relies upon its registration, in South Africa, of the trade mark TIME SQUARE in classes 41 and 43, each filed on 29 April 2013, together with two composite SUN TIME SQUARE marks registered in 2016. It also relies on a substantial common-law reputation in the TIME SQUARE mark, and on its status as a well-known mark.
15. The most relevant comparison for present purposes is that between the Applicant's registered word mark TIME SQUARE and the First Respondent's name, Times Square Hotel (Pty) Ltd, bearing in mind that the class 43 registration covers "services for providing food and drink; temporary accommodation", and the word "Hotel" in the First Respondent's name signals precisely that field of activity.
16. The dominant and memorable element of the First Respondent's name is the expression "Times Square". The corporate suffix "(Pty) Ltd" performs no distinguishing work; it does no more than denote the form of the entity. The word "Hotel" is descriptive of the service that a hotel provides, and adds little distinctiveness. Far from setting the name apart from the Applicant's mark,

the addition of that word draws the name closer to the name under which the Applicant itself trades its hotel within the TIME SQUARE precinct, namely “Time Square Hotel”. What remains, and what does the work of identifying the undertaking, is “Times Square”.

17. Set against the Applicant’s mark, the only difference in that dominant element is the interposed letter “s” – i.e. “*Time Square*” against “*Times Square*”. That difference is insignificant. Visually the two are all but indistinguishable. Aurally they are, in ordinary speech, near-homophones: spoken in the course of an ordinary enquiry or recommendation, “Time Square” and “Times Square” would seldom be told apart. Conceptually they convey the same idea. The single added letter does not shift the dominant impression created by the name, and it is upon the dominant impression, imperfectly recollected, that the ordinary customer acts.
18. The context in which that comparison falls to be made heightens, rather than reduces, the likelihood of confusion: the First Respondent’s name presents itself as that of a hotel, and hotel services (i.e. temporary accommodation) fall squarely within the Applicant’s class 43 registration and within the field in which the Applicant in fact trades under a near-identical name. The First Respondent’s principal business is not disclose on the register, so there is nothing to confine its activities to some field remote from the Applicant’s. In any event, its name expressly presents itself as a hotel. A member of the public encountering “Times Square Hotel” would have no reason to think that it

was not a hotel operated by, licensed by, or otherwise connected with the Applicant's well-known TIME SQUARE undertaking. The risk of confusion is, in my view, real and substantial.

19. That conclusion is fortified by an earlier decision of this Tribunal concerning materially the same issue, in proceedings that were opposed and in which both parties had the opportunity fully to advance their respective cases before the presiding member. In the objections brought by this same Applicant against Times Square Ballito (Pty) Ltd, Times Square PMB (Pty) Ltd and Times Square Cape (Pty) Ltd (CT00924ADJ2022, CT00925ADJ2022 and CT00926ADJ2022, decided on 18 September 2022), the Tribunal held that the addition of the letter "s" does not distinguish a "Times Square" name from the Applicant's TIME SQUARE trade mark, the geographical additions being non-distinctive (para 5.2 *et seq*). The reasoning applies with equal, if not greater, force here, where the only addition to the offending name is the descriptive word "Hotel" – a word that describes the very service for which the Applicant's mark is registered and used.
20. The Applicant's reputation in the TIME SQUARE mark, built over more than a decade of use and substantial promotional expenditure, further reinforces the position. The better known the mark, the more readily will a member of the public confronted with a near-identical name assume a connection with its proprietor.

21. Taking these considerations together, and applying the value judgment required by *Cowbell* supra, I am satisfied that the First Respondent's name is confusingly similar to the Applicant's registered TIME SQUARE trade mark, contrary to section 11(2)(b) of the Act. It follows, therefore, that section 11(2)(c)(i) is also contravened. A member of the public confronted with the name "Times Square Hotel", in the same field of temporary accommodation in which the Applicant trades under the name Time Square Hotel, and given the reputation of the Applicant's mark, is reasonably likely to draw the inference that the First Respondent is a part of, an extension of, or otherwise associated with, the Applicant. That inference would be incorrect. The First Respondent's name is therefore such as would reasonably mislead a person into believing incorrectly that it is associated with the Applicant.
22. As to costs, the Applicant seeks an award under regulation 156. The power to award costs is one that the Tribunal exercises sparingly, and is generally reserved for cases of misconduct or abuse of its process. Although the First Respondent has engaged neither with the Applicant's correspondence nor with these proceedings, its conduct amounts to non-participation rather than to any abuse of the Tribunal's process, and I do not consider that this is a case in which a costs order is warranted. I make no order as to costs.

ORDER

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

- (a) The application for a default order in terms of regulation 153 is granted.
- (b) It is determined that the name of the First Respondent, Times Square Hotel (Pty) Ltd, does not satisfy the requirements of section 11(2)(b) and section 11(2)(c)(i) of the Act.
- (c) The First Respondent is directed, in terms of section 160(3)(b)(ii) of the Act, to –
 - (i) choose a new name that does not consist of, incorporate, or is not confusingly similar to, the trade mark TIME SQUARE, or any other mark confusingly or deceptively similar to it, and that does not imply an association with the Applicant; and
 - (ii) file a notice of amendment to its Memorandum of Incorporation giving effect to that change, within 3 (three) months of the date of service of this order.
- (d) In the event that the First Respondent fails to comply with paragraph (c) within the period stated, the Second Respondent is directed, in terms of section 160(3)(b)(ii) read with section 14(2) of the Act, to change the First Respondent's name on the companies register to its registration number, 2024/511356/07, followed by the expression "(Pty) Ltd", as the First Respondent's interim name.

- (e) This order must be served on the Respondents by the Recording Officer (Registrar) of the Tribunal.

Richard Bradstreet

Member of the Companies Tribunal

1 September 2026