



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

Case No: CT02831ADJ2026

In the matter between:

Merchants SA (Pty) Ltd

Applicant

And

Merchants Hub (Pty) Ltd

First Respondent

Companies and Intellectual Property Commission ("CIPC") Second Respondent

Tribunal Member: D Terblanche

Date of Decision: 2 September 2026

Ruling – Decision and Reasons

1. THE PARTIES

[1] The Applicant, Merchants SA (Pty) Ltd (Reg. No. 1984/000177/07, registered at Wanderers Building, The Campus, 57 Sloane Street, Bryanston), is represented by Eversheds Sutherland (SA) Inc.

[2] The First Respondent, Merchants Hub (Pty) Ltd (Reg. No. 2025/458164/07, registered at 11735 Kitsa Street, Bloemanda, Bloemfontein), was incorporated on 9 June 2025,

with Teboho Lebajoa as sole director and Tyrone Masoetsa as incorporator, its principal business listed as "Business activities not restricted."

- [3] The Second Respondent, CIPC, is cited only in its representative capacity as the body responsible for administering the registration of company names.

2. NATURE OF THE APPLICATION AND RELIEF SOUGHT

- [4] This is a company name objection brought under section 160 of the Companies Act 71 of 2008, seeking a determination that "MERCHANTS HUB (PTY) LTD" fails to satisfy section 11, and is advanced as a default judgment application under Regulation 153(1) following the First Respondent's failure to file an Answer.
- [5] The Applicant seeks an order directing the First Respondent to change its name to one that does not incorporate or is not confusingly/deceptively similar to "MERCHANTS"; costs; a direction that, absent compliance within 60 days, CIPC substitute the First Respondent's registration number followed by "(Pty) Ltd" as its interim name (s160(3)(b)(ii) read with s14(2)); and further or alternative relief.

3. FACTUAL BACKGROUND

- [6] The Applicant is a BPO company incorporated in 1984, acquired by Dimension Data (now NTT Data) in 1997, employing over 5,000 people and generating 53 million customer interactions annually across telecoms, insurance, banking, airlines, retail and ISP sectors.
- [7] It holds eight registered "MERCHANTS" trade marks (word and device) in Classes 35, 38, 41 and 42, registered between February 2023 and August 2024 and valid to 2031, covering BPO-related services.
- [8] Use of the "MERCHANTS" name traces to 2000, when the Applicant renamed from "Didata Cabletron Systems" to "The Merchants Group (South Africa)," reinforced by

sustained media coverage from 2011 to 2023 and marketing expenditure of approximately R187,868,512 over the past five years.

- [9] The Applicant became aware of the First Respondent on 12 March 2026 and, following an unanswered letter of demand served 2 April 2026 (response deadline 15 April 2026), pursued this application.
- [10] A search for "MERCHANTS HUB SOUTH AFRICA" returned results predominantly relating to the Applicant, evidencing a real risk of confusion; "MERCHANTS" is the dominant, distinctive element of the First Respondent's name, and "HUB" does not meaningfully distinguish it.

4. PROCEDURAL HISTORY

- [11] The Applicant filed its application (Form CTR 142) with a Supporting Affidavit by Yanela Sambudla (Head of Legal & Governance) on 2 July 2026; the Tribunal stamped it on 6 July 2026, the date on which it was served electronically on the First Respondent (via its registered MOI email, tyronekhauhelo@gmail.com) and on CIPC (corporatelegalservices@cipc.co.za).
- [12] The 20-business-day deadline for an Answer expired on 3 August 2026 without a filing, and the Applicant filed its default judgment application (Form CTR 145), supported by an affidavit from Ikechukwu Emmanuel Okeke of Eversheds Sutherland, on 11 August 2026.
- [13] The First Respondent did not respond at any stage — not to the demand, nor to the main application.

5. ISSUES FOR DETERMINATION

- [14] The first issue is service was proper, the Answer period was missed, and the Applicant has made out a case under Regulation 153(2).

[15] The second issue is whether "MERCHANTS HUB (PTY) LTD" is confusingly similar to "MERCHANTS" under s11(2)(a)(i)/(iii), and or falsely implies association under s11(2)(b)(i)/(iii) of the Act.

6. LEGAL FRAMEWORK AND AUTHORITIES

[16] The Tribunal's jurisdiction derives solely from the Companies Act and its Regulations, not the Trade Marks Act.

[17] Section 160 provides the mechanism for a determination that a name fails section 11, which requires that a name not be the same as, or confusingly similar to, another's registered trade mark, and not falsely imply or reasonably mislead as to association with another entity.

[18] Section 160(1) further limits who may bring such an application to a person to whom the relevant statutory notice was delivered, or "any other person with an interest in the name of a company" — a threshold requirement going to the applicant's standing, distinct from the timing question addressed in section 160(2).

[19] An application under section 160(1) may be brought on one of two bases: under section 160(2)(a), by a person who was actually delivered a statutory notice in connection with the reservation or registration of the name, within three months of that notice; or under section 160(2)(b), by any other person with an interest in the name, at any time after the name's reservation or registration, provided good cause is shown for the timing of the application.

[20] Regulation 142 prescribes the objection procedure, and Regulation 153 permits default judgment where a respondent fails to file an Answer, subject to the Tribunal satisfying itself that the applicant has made out a proper case.

[21] The Tribunal's assessment draws on a consistent line of authority establishing that adding a generic or non-distinctive word to an established name or trade mark does not defeat confusing similarity — set out in **Century City Apartments Property Services**

CC v Century City Property Owners' Association 2010 (3) SA 1 (SCA) and reaffirmed in RAM Transport (South Africa) (Pty) Ltd v RAM Logistics (Pty) Ltd [CT013NOV2018].

- [22] Related is the test in Red Bull GmbH v Red Bull Farms (Pty) Ltd [CT007JAN2019], citing Bata Ltd v Face Fashions CC 2001 SA 844 (SCA), that a later name need only bring the established mark "immediately to mind," reinforced by the imperfect-recollection approach in American Chewing Products Corporation v American Chile Co-operation 1948 (2) SA 736 (A).
- [23] Polaris Capital (Pty) Ltd v The Registrar of Companies and Polaris Capital Management (CT01503ADJ2023) confirms that leaving an infringing name on the register perpetuates deception and undermines CIPC's governance role.

7. ANALYSIS

Default application.

- [24] The Tribunal first considers whether the procedural preconditions for default judgment under Regulation 153 have been met before turning to the merits of the section 11 objection.
- [25] The record shows that the application (Form CTR 142) and its Supporting Affidavit were served electronically on the First Respondent's registered MOI email and on CIPC within the five-business-day period required following the Tribunal's stamping of the papers on 6 July 2026, as evidenced by Annexures IEO 1 to IEO 3.
- [26] Service by email to the address recorded in the First Respondent's Memorandum of Incorporation is the method contemplated by the Regulations, and the Tribunal is satisfied that service was properly effected on both the First Respondent and CIPC.

[27] The 20-business-day period within which the First Respondent was required to file an Answer accordingly expired on 3 August 2026, and no Answer, opposing affidavit, or any other response was filed by that date or at any time thereafter.

[28] In these circumstances Regulation 153(2) requires the Tribunal to satisfy itself, on the papers before it, that the Applicant has made out a proper case for the relief sought, and the Tribunal has done so by examining the Founding Affidavit of Yanela Sambudla, the annexed trade mark registrations, the marketing and media evidence, and the search-engine evidence of confusion.

[29] That evidence stands uncontradicted, and the Tribunal finds no basis on the papers to doubt its reliability or completeness.

[30] The Tribunal is accordingly satisfied that the default judgment application is procedurally sound and that the Applicant has discharged the evidentiary burden Regulation 153(2)(b) places on it.

Preliminary matters

Standing under section 160(1).

[31] Before turning to timing, default, or the merits, the Tribunal must first be satisfied that the Applicant is a person entitled to bring this application at all. The Applicant does not claim to have received a statutory notice in connection with the First Respondent's registration, and so relies on the second limb of section 160(1) — that of "any other person with an interest in the name of a company." That interest cannot be a bare or generic public interest; it must be a real and direct interest of the kind that the confusingly similar name is capable of affecting. The Applicant has established such an interest here: it is the registered proprietor of eight "MERCHANTS" trade marks across Classes 35, 38, 41 and 42, covering BPO-related services, valid to 2031; it has traded continuously under the "MERCHANTS" name since 2000; and it has built a substantial reputation in that name through sustained media coverage from 2011 to 2023 and marketing expenditure of approximately R187,868,512 over the past five

years. These are proprietary and reputational interests of precisely the kind section 160(1) is directed at protecting, and they are reinforced by the evidence that the First Respondent's name is already generating public confusion with the Applicant in practice. The Tribunal is accordingly satisfied that the Applicant has an interest in the First Respondent's name sufficient to found standing under section 160(1).

Timing of the application under section 160(2)(b).

[32] The Applicant was never delivered a notice in connection with the reservation or registration of "MERCHANTS HUB (PTY) LTD," so section 160(2)(a) — and its three-month period, contrary to the Applicant's assertion, — has no application here; the Applicant instead falls within section 160(2)(b), as "any other person with an interest in the name," entitled to apply at any time after the name's registration provided good cause is shown for the timing of the application. That threshold is met on the present facts. The Applicant had no knowledge of the First Respondent's existence until 12 March 2026, some nine months after incorporation, and nothing in the record suggests that this lack of earlier knowledge resulted from any want of diligence on the Applicant's part. From the point of discovery the Applicant acted with reasonable speed: a letter of demand was instructed and served within weeks, on 2 April 2026, and the formal application was filed within approximately four months of first becoming aware of the First Respondent's name. This sequence — prompt discovery-to-demand and demand-to-filing intervals, with no unexplained delay at any stage — establishes good cause under section 160(2)(b) for the timing of the application, notwithstanding that it was brought some thirteen months after the First Respondent's incorporation.

Substantive matters

Confusing similarity (s11(2)(a)(i)/(iii)).

[33] The test applied by the authorities cited above is whether the dominant, distinctive element of an earlier name or mark has been appropriated by a later name, notwithstanding the addition of descriptive or generic matter.

[34] "MERCHANTS" is the Applicant's core identifying mark, protected by eight registered trade marks across Classes 35, 38, 41 and 42, and it is also the first and dominant word in the First Respondent's name, "MERCHANTS HUB (PTY) LTD."

[35] The word "HUB" is a common, non-distinctive term frequently used to describe a centre of activity or a business aggregator, and it does nothing to alter the overall impression created by the shared dominant element, in the same way that the addition of generic matter was found insufficient to avoid confusion in Century City and in RAM Transport v RAM Logistics.

[36] Applying the imperfect-recollection standard endorsed in American Chewing Products and the "immediately to mind" test from Red Bull v Red Bull Farms, a consumer encountering "MERCHANTS HUB" without the two names side by side would readily be reminded of, or associate the name with, the Applicant's long-established "MERCHANTS" mark.

[36] This impression is reinforced by the objective evidence that a search for "MERCHANTS HUB SOUTH AFRICA" returns results predominantly relating to the Applicant, which demonstrates that confusion is not merely theoretical but is already occurring in practice.

[37] The Tribunal accordingly finds that "MERCHANTS HUB (PTY) LTD" is confusingly similar to the Applicant's registered "MERCHANTS" trade marks within the meaning of sections 11(2)(a)(i) and 11(2)(a)(iii) of the Companies Act.

False association (s11(2)(b)(i)/(iii)).

[38] Sections 11(2)(b)(i) and (iii) ask whether the impugned name falsely implies or reasonably suggests an association with another person or entity that does not in fact exist.

- [39] The Applicant has used the "MERCHANTS" name continuously since 2000, has built a substantial public profile through media coverage spanning 2011 to 2023, and has invested approximately R187,868,512 in marketing over the past five years alone, all of which has entrenched a strong public association between the word "MERCHANTS" and the Applicant's BPO services.
- [40] The First Respondent's registered business scope is described simply as "Business activities not restricted," meaning nothing on the public record limits it from operating in the BPO, telecoms, insurance, banking, airline, retail, or ISP sectors in which the Applicant itself trades, so the two entities' potential fields of activity are not merely similar in name but capable of overlapping in substance.
- [41] Combined with the search-engine evidence showing that enquiries into the First Respondent's name surface results associated with the Applicant, the overall picture is one in which a reasonable member of the public would likely conclude, incorrectly, that the First Respondent is connected to, associated with, or operating under licence from the Applicant.
- [42] No evidence has been placed before the Tribunal to suggest any legitimate independent explanation for the First Respondent's choice of name, and the First Respondent has not appeared to offer one.
- [43] The Tribunal accordingly finds that the First Respondent's name falsely implies, or is reasonably likely to mislead the public into believing, an association with the Applicant that does not exist, satisfying sections 11(2)(b)(i) and 11(2)(b)(iii).

Undesirability

- [44] Having found confusing similarity and false association, the Tribunal found as in **Polaris Capital**, that an infringing name left on the register perpetuates deception and undermines CIPC's own governance function.

[45] Here, the dominant shared word "MERCHANTS," the Applicant's registered trade mark rights over it, the two entities' overlapping and potentially overlapping fields of business, and the demonstrated real-world confusion in search results together mirror precisely the combination of factors that has previously justified a finding of undesirability.

[46] The Tribunal is accordingly satisfied that the First Respondent's name is undesirable within the meaning of the Companies Act and that its continued registration would cause damage to the Applicant's rights, consistent with the reasoning in both *Deutsche Babcock* and *Polaris Capital*.

8. FINDINGS

[47] The Tribunal finds, as a threshold matter, that the Applicant has standing to bring this application under section 160(1) as "a person with an interest in the name of a company," by virtue of its registered trade mark rights in "MERCHANTS" and its established reputation and goodwill in that name.

[48] On the question of timing, the Tribunal finds that the Applicant's application properly proceeds under section 160(2)(b), section 160(2)(a) being inapplicable in the absence of any notice delivered to the Applicant, and that good cause has been shown for bringing the application when it did, given the Applicant's lack of prior knowledge of the First Respondent's existence and its prompt action once that knowledge was acquired.

On the question of default judgment, the Tribunal finds that service of the main application was properly effected on the First Respondent and on CIPC, that the First Respondent failed to file an Answer within the prescribed 20-business-day period and failed to respond at any subsequent stage, and that the Applicant's uncontradicted papers satisfy the requirements of Regulation 153(2), such that default judgment is warranted.

[49] On the merits, the Tribunal finds that "MERCHANTS HUB (PTY) LTD" fails to comply with section 11 on all four grounds relied upon by the Applicant: it is confusingly similar to the Applicant's registered "MERCHANTS" trade marks under

sections 11(2)(a)(i) and 11(2)(a)(iii); it falsely implies, or is reasonably likely to mislead the public into believing, an association with the Applicant under sections 11(2)(b)(i) and 11(2)(b)(iii); and, taking all of the foregoing into account, it is undesirable and would damage the Applicant's rights if it were to remain on the register.

[50] The Tribunal further finds that the Applicant has at no stage consented to the First Respondent's use of the "MERCHANTS" name or mark, and that no such consent, express or implied, appears anywhere in the record.

9. ORDER

[51] For the reasons set out above, the Tribunal is satisfied that the Applicant has established its entitlement to the relief sought under section 160 of the Companies Act 71 of 2008, and makes the following order:

1. Default judgment is granted in favour of the Applicant.
2. The name of the First Respondent, Merchants Hub (Pty) Ltd (Reg. No. 2025/458164/07), does not satisfy the requirements of section 11 of the Act. The First Respondent must change its name to one that does not incorporate, and is not confusingly or deceptively similar to, the Applicant's "MERCHANTS" trade mark.
3. The First Respondent is directed to file a notice of amendment of its Memorandum of Incorporation reflecting its new name within 30 days of receipt of this order.
4. The First Respondent is exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in paragraph 3.
5. The First Respondent shall pay the Applicant's costs of these proceedings.
6. Should the First Respondent fail to comply with paragraph 3 within 60 days of receipt of this order, CIPC is directed, in terms of section 160(3)(b)(ii) read with section 14(2) of the Act, to record the First Respondent's registration number followed by "(Pty) Ltd" as its interim company name on the companies register.

DATED ON THE 2nd DAY OF SEPTEMBER 2026

D Terblanche

PRESIDING MEMBER

COMPANIES TRIBUNAL OF SOUTH AFRICA