



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no: CT02839/ADJ/2026

In the matter between:

Makgoba Asset Management Company (Pty) Limited

Applicant

And

Makgoba Trading Group (Pty) Limited

(Registration No 2024743183/07)

First Respondent

And

Companies and Intellectual Property Commission

Second

Respondent

Presiding Member of the Companies Tribunal: HLALELENI KATHLEEN DLEPU

Decision and Reasons

1. INTRODUCTION

1.1. The Applicant is Makgoba Asset Management (Pty) Limited with registration no 2014/245753/07 a company incorporated in terms of South African Company Laws, having its registered office at Boekenhoutbult, Mooketsi, Limpopo 0825. The Applicant is the proprietor of statutory and common law rights in the “**MAKGOBA**” and “**MAKGOBA AFRICA**” trademarks.

1.2. The First Respondent is Makgoba Trading Group (Pty) Limited a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2024/743183/07 having its registered address at 795 Stateng Section, Ramaomokokastad, Mogwase, 0195

1.3. The Second Respondent is the Companies and Intellectual Property Commission (CIPC) established by Section 185 of the Companies Act with its address at DTI Building, Block F, Meintjies Street, Sunnyside, Pretoria.

2. THE APPLICATION

2.1. The Applicant brought this application brought in terms of Section 160 of the Companies Act for an order as follows:

2.1.1. That the First Respondent to change its name and any other trademark to one which does not incorporate and is not confusingly and/or deceptively similar to the Applicant’s **MAKGOBA** and **MAKGOBA AFRICA**

2.1.2. In the event that the First Respondent fails to comply with the order set out in paragraph 2.1.1 above within 60 days ,the Second Respondent be

directed, in terms of Section 160 (3)(b)(ii) read with Section 14(2) of the Companies Act ,to record the First Respondent's registration number followed by (Pty) Ltd as the Respondent's interim company name on the Companies Register.

2.1.3. The Applicant be granted further and/or alternative relief.

2.2.The Applicant has also sought a default order in respect of the First Respondent's company name Makgoba Holding Group (Pty) Limited, and the application is based on Section 11 and 160 read with Regulation 153 of the Companies Act 71 of 2008.

2.3.The Applicant has an interest in the name of the First Respondent within the meaning of Section 160(1) of the Act to file this Application to the Companies Tribunal. The Applicant's interest will appear from the facts which were initiated and documented by the Applicant in its affidavit in particular, the Applicants trademark rights in and to the **"MAKGOBA"** and **"MAKGOBA AFRICA:"** trademark.

3. **THE BACKGROUND TO THE APPLICATION FOR JUDGEMENT BY DEFAULT**

3.1.In April 2025 the Applicant instructed the Attorneys of record to object to the name Makgoba Holding Group (Pty) Limited and the Applicant's Attorneys of record sent a letter of demand to the First Respondent calling on them to cease using the name Makgoba Holding Trading(Pty) Limited and to make an application to change its name to one not including **MAKGOBA** or any mark confusingly or deceptively similar to **MAKGOBA AFRICA** trademark.

3.2.On the 2 May 2025 and 7 October 2025 the Applicants Attorneys of record followed up with the First Respondent by email and telephonically, to no avail.

3.3. The Attorneys of Record contacted the sole director of the First Respondent, Ms Letebele Queen Mafologela telephonically highlighting the infringement and requesting that the First Respondent to provide an alternative email address so that they could send a letter of demand to her. Ms Mafologela agreed that she would voluntarily apply to the CIPC voluntarily change its name to one that do not consist of or contain the Applicants' **MAKGOBA** and **MAKGOBA AFRICA trademarks** or confusingly similar thereto.

3.4. On the 9 January 2026, the Applicant Attorneys of Record contacted Mr More telephonically and Mr More informed them that the company was closed, and that he had sent an email to the Second Respondent informing it of this regard on the 23 February 2026 the Applicants Attorney of Record followed up with Mr More via WhatsApp, to no avail. Despite several follow ups nothing came to fruition.

3.5. The Applicant submits that it instructed its attorneys of record to launch an application in terms of Section 11 (2) and 160 Of the Act, the application was launched on the 9 July 2026 the affidavit was deposed to by Thupane Joseph Makgoba deposed to on the 19 June 2026, and a was proof of service effected by the Sheriff of Mankwemadikwe and the as proof that the documents were delivered in accordance with the Act.

3.6. To date the First Respondent has not responded and their conduct is prejudicial to the Applicant. The Applicant instructed its Attorneys of Record to proceed to file the main application in terms of Section 11 read with section 160 of the Companies Act ordering the First Respondent to cease using the name Makgoba Trading Group (Pty) Limited, and to undertake to make an application to change its name to one not including Makgoba and Makgoba Africa

trademark or any confusingly similar mark. The Applicant submits that there is good cause for the relief in terms of Section 11(2) of the Companies Act.

3.7. On the 17 August 2026, with the supporting affidavit deposed to by Dale Timothy Healy, the Applicant lodged an application in terms of Section 160 name of the Companies Act requesting the Tribunal to grant an order that the name Makgoba Trading Group(Pty) Ltd 2024 /743183/07 be changed on the basis that it is contrary to Section 11 (2) of the Act. The Application was served by email attached to the Applicants affidavit.

3.8. To date, neither the First Respondent nor anyone acting on its behalf has responded to the application nor oppose it.

3.9. I am satisfied that the applicant has made out a case for the main application to be considered by default against the First Respondent.

4. **THE APPLICANTS CASE**

4.1. The order is sought due to the following reasons:

4.1.1. The Applicant is the proprietor of amongst others, various South African registered trademarks namely:

- (i) Trademark; **MAKGOBA AFRIKA Registration no 2016/09583
Class 31**
- (ii) Trademark; **MAKGOBA AFRIKA Registration no 2021/26085
Class 35**
- (iii) Trademark; **MAKGOBA AFRIKA Registration no 2021/26086
Class 39**

- (iv) Trademark; **MAKGOBA AFRIKA Registration no 2021/26087**
Class no 43

4.2. The above trademarks are still valid and enforceable; copies of the trademark register pages obtained from the Registrar of Trademarks was attached to the Applicants affidavit. The Applicants trademarks have been registered for several decades prior to the incorporation of the First Respondent.

4.3. It is important to note that the Applicant has consistently upheld a legacy of excellence, in agricultural operations on community land, specifically farms on which avocado production has been established, it has also registered trademarks **Makgoba and Makgoba Afrika** in relation to avocados and related to logistics and operational services in both domestic and international markets. The reputation and goodwill attached to the Makgoba and Makgoba Afrika trademarks is an asset of considerable commercial value and importance to the Applicant. The Company was incorporated and registered its first trademark in 2021, several years before the incorporation of the First Respondent whose incorporation was in 2024.

4.4. The First Respondent's Company name Makgoba Trading Group offends the provision of Section 11(2)(a)(iii) in that it is identical to or the same as the Applicant's **Makgoba and Makgoba Afrika** trademark registration which incorporation was done several years ago.

4.5. In support of this application the Applicant attached founding affidavit in the name of **Thupane Joseph Makgoba** and supporting affidavit of **Dale Timothy Healy** and confirmatory affidavits of **Keandra Charleigh Anthony** and

Abongiwe Buthelezi, setting out the facts upon which the Applicant relies on duly authorised by resolutions.

5. **APPLICABLE LAW**

5.1. **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”.

5.2. 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 anytime after the date of the reservation or registration of the name that is the subject of the application, in any other case”.

5.3. Sections 11(2) (a)(iii), 11 (2)(b)(iii); and 11(2)(c) (i) of the Companies Act, in as far as they are applicable, read as follows:

“(2) The name of a company must

(a) not be the same as –

(i) ...

(ii) ...

(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, trademark, mark, word, or expression contemplated in paragraph (a) unless-

(i) ...

(ii) ...

(iii) in the case of a name similar to a trademark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trademark, or is authorised by the registered owner or to use it; or ...

(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...”

5.4. The question is whether the First Respondent's name and the Applicant's trademark are confusingly similar as envisaged in Section 11(2)(b) (iii) read with Section 11 (2)(a)(iii) of the Companies Act.

5.5. The Applicant is best known in the Agricultural commodities Avocado, and logistics marketed and sold under its Makgoba and Makgoba Afrika brand name and was established in 2016 and this brand has become an integral part of avocado exporters from South Africa to around the world, and several of its products can be purchased in South Africa.

5.6. **MAKGOBA** and **MAKGOBA AFRIKA** registered trademarks and name are of exclusive use by the Applicants and also protected under the common law , and although the nature of the First Respondent's Company is not known or clear, the use of the Applicant's name by the First Respondent is confusingly similar to the Applicant's name and trademarks. This elevates the risk of confusion between the Applicant's trademark and the First Respondent's name, products, and services in the marketplace.

5.7. I further agree that the confusion and/or deception, can lead to injury to the Applicant's business. This is particularly so when it is taken into account that the Applicant has absolutely no control whatsoever on the quality and type of goods sold and services rendered by the Company.

5.8. In **Plascon-Evans Paints (TVL) Ltd. V Van Riebeeck Paints (Pty) Ltd.** (**Plascon-Evans, CORBETT JA quoted** MARGO J, delivering the judgment in *International Power Marketing (Pty) Ltd v Searles Industrials (Pty) Ltd. 1983(4) SA 163 (T)*, as follows on the meaning of the words "as to be likely to deceive or cause confusion".

"the main legal principles relevant to the decision of the instant case may be briefly summarised as follows: -

In an infringement action the onus is on the plaintiff to show the probability or likelihood of deception or confusion.... it is enough for the plaintiff to show that a substantial number of persons will probably be confused as to the origin of the goods or the existence or non-existence of such a connection ... the comparison must be made with reference to the sense, sound and appearance of the marks. The marks must be viewed as they would be encountered in the marketplace and against the

*background of relevant surrounding circumstances. **The marks must not only be considered side by side, but also separately. It must be borne in mind that the ordinary purchaser may encounter goods, bearing the defendant's mark, with an imperfect recollection of the registered mark and due allowance must be made for this. If each of the marks contains a main or dominant feature or idea the likely impact made by this on the mind of the customer must be taken into account.** As it has been put, marks are remembered rather by general impressions or by some significant or striking feature than by a photographic recollection of the whole. And finally, consideration must be given to the manner in which the marks are likely to be employed as for example, the use of name marks in conjunction with a generic description of the goods”.*

5.9. CORBETT JA: stated further at paragraph 47 in Plascon Evans “...in my view, a purely verbal comparison is not enough. As I have said, in cases such as this the Court must transport itself to the marketplace and try to visualize how customers of the goods, in relation to which the marks are used, would react.”

6. **FINDINGS**

6.1. I find that the Applicant has shown good cause to bring this application under section 160 of the Companies Act.

6.2. I further find that the First Respondent's name is so confusingly similar to the Applicant's trademark that it falsely implies or suggests that, or reasonably mislead a person to believe incorrectly, that the Company is part of, or associated with, the Applicant in contravention of section 11(2)(c) of the Companies Act.

6.3. Considering the conspectus of the case cited above and the guidance from the above case, I conclude that the First Respondent's name runs afoul of the

provisions of sections 11(2)(b)(iii) read with section 11(2)(a)(iii) and Section 11(2)(c)(i) of the Companies Act.

7. ORDER

I hereby grant the following relief by default judgement:

7.1. The First Respondent is ordered to change its name to one which does not consist of, or incorporate, the mark **MAKGOBA and MAKGOBA AFRIKA** , or any other mark which is confusingly and/or deceptively similar to the Applicant's **MAKGOBA and MAKGOBA AFRIKA** trademark.

7.2. The Second Respondent is directed to change the name of the First Respondent to its registration number, in the event of the First Respondent not complying with point 7.1 above within 3 months from the date of this order; and

7.3. The Second Respondent notify the First Respondent within 14 days of this order.

7.4. No order as to costs.

H K Dlepu Member of the Tribunal