IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02941ADJ2016

In the matter between:

SHOPRITE CHECKERS PROPRIETARY LIMITED	FIRST APPLICANT
FRESHMARK PROPRIETARY LIMITED	SECOND APPLICANT
AND	
JUNIOR FRESHMARK MARKET	FIRST RESPONDENT
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	SECOND RESPONDENT

Date of Decision: 1st November 2026

DECISION

INTRODUCTION

1. he First Applicant is Shoprite Checkers Proprietary Limited, a private company with registration no. 1929/001817/07 registered in accordance with the company laws of the Republic of South Africa with its principal place of

business being, Cnr William Dabbs Street and Old Paarl Road, Brackenfell 7560, South Africa.

2. The Second Applicant is Freshmark Proprietary Limited, a private company with registration no. 1989/003165/07 registered in accordance with the company laws of the Republic of South Africa with its principal place of business being, Cnr William Dabbs Street and Old Paarl Road, Brackenfell 7560, South Africa

3. The First Respondent is Junior Freshmark Market Proprietary Limited, a private company incorporated on 20 June 2024, with registration no. 2024/364655/07, with registered address being 321 Frederick Street, Flat 104 Indaba Flat, Pretoria, Gauteng, 0183, South Africa.

4. The Second Respondent is the Companies and Intellectual Property Commission, an organ of state established in terms of Section 185 of the Companies Act, with its registered office at DTI Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng (“CIPC”),

5. The Applicant applies to the Companies Tribunal in terms of Section 11(2) of the Companies Act 71 of 2008 (“the Companies Act”), a name of a company must not be the same as the name of another company, domesticated company, registered external company, close corporation or co-operative and must not be confusingly similar.

APPLICANT'S SUBMISSIONS

6. The Applicant is the proprietor, in South Africa, of the several trademarks in the term FRESHMARK

7. The FRESHMARK Marks have been used on an extensive scale in relation to inter alia the supply of fresh fruit and vegetables by the Second Applicant since at least 1989, which is sold in the First Applicant's stores, i.e. in excess of thirty-five years before the registration of the First Respondent;

8. JUNIOR FRESHMARK MARKET is confusingly similar to the First Applicant's FRESHMARK Marks and the Second Applicant's company name that if JUNIOR FRESHMARK MARKET were to be used and members of the public were to see the First Respondent's name, they may think that the First Respondent is associated with the Applicants. The inclusion of the word "Market" provides an indication of the intended use of the company name in relation to the sale of goods which falls within the business of the First Applicant as a retailer of goods, and which includes the marketing and of a variety of products under the FRESHMARK marks in its stores. It is submitted that of itself "Junior" is descriptive and does not serve to distinguish the respondent's names from the applicant's marks signifies as it signifies a smaller or diminutive version of the market with the result that FRESHMARK is undoubtedly the dominant and most memorable part of the First Respondent's name.

9. The registration of the First Respondent's name would affect the Applicants financially, thereby enabling the First Respondent to ride on the coattails of the Applicants. Furthermore, the First Respondent's name falsely imply, and would reasonably mislead the public into incorrectly believing that the First Respondent is part of, affiliated with, or associated with the Applicants, in contravention of Section 11 (2)(c)(i) of the Act.

10. The Applicant has attempted to resolve this matter without resorting to litigation but has not received the First Respondent's co-operation. Therefore, the Applicant has no option but to proceed with this formal objection.

NAME DISPUTES

APPLICABLE LAW

11. Section 11 of the Companies Act provides the criteria for names of companies.

Subsection (2) is most relevant and states as follows:

"(2) the name of a company must –

(a) not be the same as, or confusingly similar to –

(i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names;

(ii) ... Not relevant

(iii) a registered trademark 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 trademark or a well-known trademark as contemplated in section 35 of the trademarks act; or

(iv) ... Not relevant

2 (b) 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;

EVALUATION AND FINDINGS

12. The purpose of section 11 of the Companies Act is to protect names from being passed off by new companies registering similar names at the expense of the original name holder of the company or trade mark. In the case before me the First Respondents' name is similar to several trade marks held by the Applicant. Both Have the term FRESHMARK in them. This may give members of the public the impression that the Respondent is associated with the Applicant. This may affect the Applicants reputation and financially.

13. The First Respondent is thus ordered to change its name to one that does not include FRESHMARK in it.

ORDER

14. I find in favour of the Applicant

a. The First Respondent is directed to change its name to one which does not incorporate “FRESHMARK” and is not confusingly and or deceptively similar to Applicant's**.**
b. The First Respondent is to file a notice of an amendment of its Memorandum of Incorporation, within 60 days of receipt of this order in order to change its name as per above.
c. In the event that the First Respondent fails to comply with the order as aforementioned, within 3 months, from the date of the order, that Companies and Intellectual Property Commission (CIPC) be directed, in terms of Section 160(3) (b) (ii) read with section 14(2) of the Act, to change the First respondent’s name to is registered company number being 2024/364655/07 as the First Respondent’s interim company name on the Companies register.
d. The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
e. The Second Respondent is required to register the name applied for by the applicant once the Respondents name is removed from the registrar by the First Respondent or by CIPC within three months of the First Respondent failing to do so.
f. The registrar of the Tribunal is instructed to bring this ruling to the attention of CIPC.

MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL