



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01647/ADJ/2024

SAFIKA HOLDINGS PROPRIETARY LIMITED

Applicant

And

SAFIKA FORESTRY AND TRANSPORT PROPRIETARY LIMITED

First Respondent

REGISTRATION NO: 2018/617908/07

COMMISSIONER OF COMPANIES

Second Respondent

Presiding Member: JUDGE DENNIS DAVIS

Date of Decision: 1 August 2024

DECISION (Reasons and an Order)

INTRODUCTION

1. This is an application for a default judgment in favour of the applicant to order the first respondent to change its name to one which does not incorporate the mark SAFIKA or any mark which is confusingly and / or deceptively similar to the applicant's Safika trademark.
2. The applicant lodge an application in terms of s 160 of the Companies Act 71 of 2008 ('the Act') for a determination that the company name SAFIKA FORESTRY AND

TRANSPORT (Pty) Ltd breaches s 11 of the Act in that it is confusingly and/or deceptively similar to a registered trademark of applicant Safika.

3. It appears that on 17 January 2024 applicant's attorneys sent an electronic copy of the application to the director of first respondent Mr Bhekumuzi Alsen Nkosi to an email address which had been provided by the directors to second respondent at the time of the registration of first respondent.
4. Pursuant thereto and in terms of Regulation 153 of the Companies Regulation of 2011 first respondent had until 16 February 2024 to file and serve its answer to this application. As the applicant notes:

‘The deadline of 16 February 2024 has long passed and the applicant has not been served with any answer by the first respondent nor has it, to the applicant's knowledge filed any answer with the Tribunal.’

EVALUATION

5. In the circumstances of this case Regulation 153 of the Companies Regulations of 2011 is relevant.
 - (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.
 - (2) On an application in terms of subsection (1), the Tribunal may make an appropriate order –
 - (a) after it has heard any required evidence concerning the motion; and
 - (b) if it is satisfied that the notice or application was adequately served.
 - (3) Upon an order being made in terms of subregulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party.’
6. There is no evidence to gainsay the argument of applicant that the manner in which first respondent has chosen its business name is clearly confusing and deceptively similar to a registered trademark which is owned by the applicant. First respondent has not provided any answer and therefore falls within the scope of Regulation 153 of the Companies Regulations.

7. For these reasons therefore the following order is made:
1. First respondent is ordered to change its name to one which does not incorporate the mark SAFIKA or any mark which is confusing and / or deceptively similar to the applicant SAFIKA trademark.
 2. In the event that the first respondent fails to comply with the order within three months the second respondent is directed in terms of s 160 (3) (b) (ii) read with s 14 (2) (i) of the Act to record the first respondent's registration number followed by (Pty) Ltd as the first respondent's interim company on the company's register.
 3. There is no order as to costs.



JUDGE DENNIS DAVIS
MEMBER OF THE COMPANIES TRIBUNAL