IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01848/ADJ/2024

In the matter between:

GALLO MUSIC INVESTMENTS (PTY) LTD Applicant
(Registration Number. 2019/312602/07)

and

GALLO RECORDS (PTY) LTD 1st Respondent

(Registration Number.2022/436928/07)

COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION 2nd Respondent

Date of Decision: 29th March 2025

DECISION

INTRODUCTION

1. The Applicant is. It is **GALLO MUSIC INVESTMENTS (PTY) LTD** a duly incorporated South African company, registered under number 2019/312602/07.

2. The First Respondent is **GALLO RECORDS (PTY) LTD**. It is a duly incorporated South African company, registered under number 2022/436928/07.

3. The Second Respondent is the Companies and Intellectual Properties Commission resident at DTI Campus 77 Meintjies Street.

4. 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

5. On 6TH November 2024 the applicant filed its company name objection with the Companies Tribunal and the applicant served the company name objection on the respondent through the Sherriff. Despite being informed of the application the first respondent does not oppose it.

6. Despite various correspondence the Respondent has failed to deregister its name

7. The Applicant submits that the Respondent's name is confusingly similar to its name.

8. The Applicant has been in business for almost a hundred years. It is well known in the music industry both domestically and globally. The Applicant has a number of trademarks in the name GALLO and has spent extensively in marketing its name. The Respondent was only registered in 2022 and is in the same industry. The two names are confusingly similar, and this will affect the Applicants reputation, and it will also affect the Applicant financially.

APPLICABLE LAW

9. 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

(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

10. Section 11 (2) of the Companies Act requires me to determine whether the name of the respondent is confusingly similar to that of the Applicants. They both have the word GALLO in them. The names look similar and sound similar. When members of the public see the Respondents' name, they will think of the Applicant. Both the Applicant and the Respondent are in the same business. This may give members of the public the impression that it is owned by the Applicant with the potential to cause reputational damage causing financial harm to the Applicant.

11. The purpose of section 11 of the Companies Act is to protect names from being passed off by companies registering similar names at the expense of the original name holder of the company or trademark. I thus find in favour of the Applicant

ORDER

a. I find in favour of the Applicant
b. The First Respondent is directed to change its name to one which does not incorporate and is not confusingly and or deceptively similar to Applicant's**.** It should not include the word GALLO in any form.
c. 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.

d. 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 respondent's name to is registered company number being 2022/436928/07 as the Respondent's interim company name on the Companies register.
e. The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
f. This Determination must be served on the Respondent and the Registrar of Companies and Intellectual Property Commission.

MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL