



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02227/ADJ/2025

In the matter between:

**TIGER FOOD BRANDS INTELLECTUAL PROPERTY
HOLDING COMPANY (Pty) LTD
(1976/000807/07)**

Applicant

and

**OROS SEWING ENTERPRISE (PTY) LIMITED
(2020/147455/07)**

FIRST RESPONDENT

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**

Second Respondent

Presiding Member of the Companies Tribunal: N. CAWE

Date of Decision: 6 October 2025

DECISION (Reasons and Order)

1. INTRODUCTION

- 1.1. The Applicant is Tiger Food Brands Intellectual Property Holding Company (Pty) Ltd, a company duly incorporated under registration number 1976/000807/07 with its registered address at 3010 William Nicol Drive, Bryanston, 2191.
- 1.2. The Applicant is a wholly-owned subsidiary and the intellectual holding company of Tiger Brands and the proprietor, in South Africa, of various trade mark registrations in various categories.
- 1.3. Applicant is a well-established Fast Moving Consumer Goods (“FMCG”) company which sells the Brooke’s range of products, which include “OROS”.
- 1.4. Tiger Brands has a particular focus on the African continent, driving growth across 25 countries with 5 foreign markets, and was registered in South Africa in 1926.
- 1.5. The First Respondent is OROS SEWING ENTERPRISE (Pty) LIMITED a company duly incorporated in terms of the Act, with registration number 2020/147455/07, and having its registered address at No. 329E Matolweni Street, Ngangelizwe Location, Mthatha, Eastern Cape, 5099.
- 1.6. Second Respondent is the Companies and Intellectual Property Commission (“CIPC”), an organ of state established in terms of Section 185 of the Act, having its principal place of business at DTI Campus, Block F, 77 Meinjties Street, Sunnyside, Pretoria, Gauteng Province. The Second Respondent is cited only in its official capacity as the custodian of the companies register.

2 BASIS FOR THE APPLICATION

- 2.1 The Applicant applies in terms of Regulation 153 of the Companies Act 71 Of 2008 (“the Act”), for a Default Order that:
 - (i) the First Respondent’s company name, Oros Sewing Enterprise (Pty) LIMITED

does not satisfy the requirements of Sections 11 of the Act and directing that First Respondent change its name as provided for in Section 160 (3)(b)(ii) of the Act.

- (ii) In the event that the First Respondent fails to comply with the Order set out in paragraph 2.1(i) above within 3 months from the date of the order, directing the Second Respondent, in terms of section 160(3)(b)(ii), to change the name of the First Respondent to K2020/147455/07 (Pty) Ltd, as its interim company name.
- (iii) Costs of the application be granted against the First Respondent, as the Applicant took all reasonable steps to resolve the matter amicably and to avoid lodging a company name dispute.

2.2 According to Kyle Carson (“Carson”), the marketing director for snacks, treats and beverages division of Tiger Consumer Brands Limited, in his Founding Affidavit, the existence of the First Respondent first came to the attention of the Applicant on 12 January 2021 when Applicant’s attorneys of record, Edward Nathan Sonnenbergs (“ENS”) made Applicant aware of First Respondent’s existence. Applicant directed the attorneys to contact the First Respondent about the matter.

2.3 ENS sent a letter, by email on 12 January 2021, to the First Respondent requesting First Respondent to explain the exact nature of its business in order to determine if there was an overlap or not.

2.4 On 7 February 2021 the First Respondent replied via email indicating that Oros was the director’s childhood nickname and that the company had not started trading. Moreover it provided sewing services and did not sell any goods.

2.5 In February 2021 First Respondent asked to be given 3 months within which to change the name. After the lapse of the 3 months First Respondent had not changed its name.

2.6 There was a flurry of emails between the parties between 31 May and 12 October 2021 regarding the issue, and at some stage during this period First Respondent assured ENS, once again, that it was in the process of changing the name.

2.7 Realising that First Respondent had not changed its name, despite its

undertaking to do so, Applicant instructed ENS to approach the Tribunal for relief. The Tribunal received the Applicant's Form CTR142 and attachments on 9 May 2025.

2.8 On 12 May 2025 the stamped Form CTR 142 and attachments were served on the First Respondent, electronically, within the prescribed 5 business days for such service.

2.9 An inspection of the Companies register revealed that First Respondent's name had not changed nor had the requisite intention to defend been filed by First Respondent Twenty days after service of the application on the First Respondent

2.10 Tammi Lea Pretorius, a Director at ENS, deposed to the affidavit in support of the Default Order application.

3. ISSUES TO BE DECIDED

3.1 Applicant contends that First Respondent's name, "OROS SEWING ENTERPRISE (Pty) Limited", does not satisfy the requirements of Section 11 of the Act and submits that the inclusion of the words "OROS" in First Respondent's name infringes on Applicant's registered trade mark and is in violation of Section 34 of the Trade Marks Act 194/93 ("the Trade Marks Act") Furthermore, Applicant submits that this infringement is likely to compromise the repute of the "OROS" trade mark.

3.2 Applicant seeks an order wherein (a) First Respondent is ordered to change its name to one which does not incorporate the words "OROS " and that is not confusingly and/or deceptively similar to the Applicant's name.
(b) in the event of First Respondent fails to comply with Order set out in 3.2 (a) above, after 3 months the Second Respondent change First Respondent's name to K2020/147455/07 followed by (Pty) Ltd.
(c) costs of suit to be awarded against the First Respondent as Applicant had tried to resolve the matter amicably without any success.

3.3 Applicant submits that the dominant and memorable part of First Respondent's name is identical to the Applicant's trademark "OROS " and that the remaining portion of First Respondent's name "SEWING" and "ENTERPRISE is purely descriptive and does not serve adequately to distinguish the company name from Applicant's well known "OROS" trademark. Applicant concludes that First Respondent's name is, therefore, confusingly and deceptively similar to Applicants' registered "OROS" trademark.

4. APPLICABLE LAW

4.1 **Section 11** of the Act provides as follows: "11. **Criteria for names of companies.** —

(1)...

(2) *The name of a company must—*

(a) *not be the same as—*

(i) *the name of another company, domesticated company, registered external company, close corporation or co-operative;*

(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 Mark 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; or,*

(iv) ...

(b) *not be confusingly similar to a name, trademark, mark, word or expression contemplated in paragraph (a) unless—*

(i) *in the case of names referred to in paragraph (a) (i), each company bearing any such similar name is a member of the same group of companies; ...*

(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;"*

4.2 **Section 160** of the Act deals with **disputes concerning reservation or registration of company names** and enunciates the jurisdiction of the Companies Tribunal as follows:

(1) *A person to whom a notice is delivered in terms of this Act with respect to an application for reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or 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.***(emphasis added)

(2) *An application in terms of subsection (1) may be made— (a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or (b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.*

(3) *After considering an application made in terms of subsection (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal —:*

(a) *must make a determination whether that name, or the reservation, registration or use of the name, or the transfer of the reservation or registration of the name, satisfies the requirements of this Act; and*

(b) *may make an administrative order directing-*

(i) *the Commission to*

(aa) *reserve a contested name, or register a particular defensive name that had been contested, for the applicant;*

(bb) *register a name or amended name that had been contested as the name of a company;*

(cc) *cancel the reservation of a name, or the registration of a defensive name; or*

- (dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or*
- (ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.”*

4.3 **Companies Regulation 153** of the 2011 Regulations provides for Default Orders as follows:

- (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 such an application “the Tribunal may make an appropriate order-(a) after it has heard the required evidence concerning the motion, and (b) if it is satisfied that the notice or application was adequately served”*

4.4 **Section 34 (1) of the Trade Marks Act (Act 194/93)** which states that the rights acquired by the registration of a trade mark shall be infringed by-

- (a) The unauthorized use in the course of trade in relation to the goods or services in respect of which the trade mark is registered, of an identical mark or of a mark so nearly resembling it as to be likely to deceive or cause confusion;*
- (b) The unauthorized use of a mark which is identical or similar to the trade mark registered, in the course of trade in relation to goods or services which are similar to the goods or services in respect of which the trade mark is registered, that in such as there exists the likelihood of deception or confusion.*

5. EVALUATION and FINDINGS

5.1 Given the First Respondent's lack of action in this matter, and considering the importance of this matter to the Applicant, it is evident that the Applicant had no alternative but to proceed with the application for relief hence the present default application. I am persuaded that the application of Regulation 153 is appropriate in this instance, and will thus proceed to deal with the matter on a default basis.

5.2 The question has to be asked whether the First Respondent's name is confusingly similar to that of the Applicant, as set out in section 11 of the Act, and, moreover, would third parties confuse the First Respondent as part or subsidiary of the Applicant. The answer, I am persuaded, would be in the affirmative.

5.3 The purpose of Section 11 of the 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, and should apply in the instant case.

5.4 Dealing with the issue of Trade Marks infringement, In **Vermark (Pty) Ltd v BMW AG [2007] SCA 53 (RSA) paras 6-7**, the SCA, the court approved of the view taken by the House of Lords in **R v Johnstone [2003] UKHL 28** (22 May 2003), wherein Lord Nicholls stated:

"...the essence of a trade mark has always been that it is a badge of origin. It indicates a trade source: a connection in the course of trade between the goods and the proprietor of the mark. That is its function"

5.4 In Applicant's founding affidavit, Carson, at Paragraphs 5.23, 5.24 and 5.2.5 avers the following:-

5.23 *"...it is clear that the Tiger Brands (and by extension the Applicant) and its*

predecessors have made extensive and considerable use in South Africa of the OROS trade mark for the past 100 years, to the extent that it has acquired a very substantial and favourable reputation and goodwill in its OROS trade mark in South Africa.

5.24 *The OROS trade mark is therefore synonymous with, and distinctive of, the Applicant, and particularly in the relevant industry. The OROS trade mark is an asset of significant commercial value to the Applicant.*

5.25 *Further, the OROS trade mark undoubtedly qualifies for protection as a well-known trade mark. I am advised that any unauthorised use of a protected trade mark which is identical or similar to it is likely to take unfair advantage of, or be detrimental to the distinctive character or repute the OROS trade mark, will amount to trade mark infringement in terms of section 34 (1)(c) of the Trade Marks Act, notwithstanding the absence of confusion or deception. Such unauthorised use by the First Respondent will, therefore, also result in the dilution of the well-known OROS trade mark”.*

5.5 Taking into consideration Carson’s averments above, it can, therefore, also be concluded that the word “OROS” predates that of the First Respondent’s registration by over a century. Further First Respondent’s name will mislead the reasonable person to believe, incorrectly, that there is an association with the Applicant’s “OROS ” trademark, as the sphere of First Respondent’s operation is registered as “not restricted”.

6. FINDINGS

6.1 I am persuaded that the Applicant has made out a case that the First Respondent’s name does not comply with Sections 11(2)(b) and (c): its name

is confusingly similar and falsely implies, or could reasonably mislead a person to believe, incorrectly, that First Respondent is part of, or associated with the Applicant.

6.2 The Application is granted the Order as set out below.

7. ORDER

7.1 An administrative order is made in terms of Section 160(3)(b)(ii) as follows:

- (i) First Respondent must change its name to one which does not consist of, or incorporate the trade mark “OROS” or any other mark which is confusingly and/or deceptively similar to the Applicant’s ‘OROS ’ trade mark as it is in contravention of Sections 11(2)(b)(iii) and (c)(i) of the Act.
- (ii) The CIPC is authorised and directed to change the name of the First Respondent to K2020/147455/07, followed by (Pty) Ltd in the event of First Respondent not complying with paragraph (i) above within 60 days from the date of receipt of this order.
- (iii) The Respondent must file a notice of amendment of its Memorandum of Incorporation with the CIPC 60 days after it has been served with this Order.
- (iv) The instant Order must be served on the First Respondent by the Tribunal’s Recording Officer (Registrar)
- (V) There is no order as to costs.

N. CAWE: Member of the Companies Tribunal

