



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02276ADJ2025

In the matter between:

WEIR ENGINEERING SERVICES LIMITED

APPLICANT

and

WEIR MINERALS ZA

FIRST RESPONDENT

SOUTH AFRICA GROUP(PTY)LTD

THE REGISTRAR OF COMPANIES

SECOND RESPONDENT

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO

Date of Decision:22 August 2025

DECISION (Reasons and an Order)

A. INTRODUCTION

[1] This is an application brought in terms of section 160(1) of the Companies Act 71 of 2008 ("the Act") for a determination on whether the Respondent's registered company name satisfies the requirements of sections 11(2)(a)(iii), 11(2)(b)(iii), and 11(2)(c)(i) of the Act.

- [2] The Applicant, Weir Engineering Services Limited, is a company incorporated in Scotland under the laws of the United Kingdom and forms part of the Weir Group PLC, a multinational engineering group headquartered in Glasgow, Scotland.
- [3] The application is an unopposed in respect of the First Respondent's registered name Weir Minerals Za South Africa Group (Pty) Limited, which the Applicant contends is identical and/or confusingly similar to its long-established and well-known WEIR trademark.

B. BACKGROUND

- [5] The Applicant is the proprietor of the WEIR trademark, which has been registered in South Africa since 2006.
- [6] In addition to its statutory trademark rights, the Applicant has developed a substantial international and local reputation for the WEIR brand. It is widely referenced in international and South African media, often described simply as "Weir Minerals."
- [7] In South Africa, the Applicant conducts business through its licensed subsidiaries, including Weir HBF (Pty) Ltd, Weir Minerals Africa (Pty) Ltd, Weir Minerals Isando (Pty) Ltd, Weir Minerals Services (Africa) (Pty) Ltd, Weir Minerals Shared Services (Pty) Ltd, and Weir Minerals South Africa (Pty) Ltd.
- [8] The opposed name incorporates the WEIR mark in its entirety. It merely adds descriptors ("ZA" and "Group"), which are insufficient to distinguish it from the Applicant's existing company names and trade mark rights.
- [9] The Sheriff's return of service, dated 3 December 2024, records that the First Respondent was "unknown to the premises," casting further doubt on the *bona fides* of the First Respondent's operations.

C. ISSUES FOR DETERMINATION

[10] The Tribunal is required to determine whether the First Respondent's registered company name:

- (a) is the same as, or confusingly similar to, the Applicant's registered trademark "WEIR" within the meaning of section 11(2)(a)(iii) of the Act;
- (b) falsely implies or suggests, or is such as would reasonably mislead a person to misbelieve, that the company is part of, or associated with, the Applicant's group of companies, as contemplated in section 11(2)(b)(iii); and
- (c) is likely to mislead or deceive members of the public, in contravention of section 11(2)(c)(i).

D. APPLICABLE LEGAL PRINCIPLES

[11] Section 11 of the Act sets out the criteria for company names. In particular, section 11(2)(a)(iii) provides that a company name **"must not be the same as, or confusingly similar to, a registered trade mark belonging to another person."**

[12] In *National Brands Limited v Cape Cookies CC and Another*,¹ the court emphasised that the test for similarity involves a **value judgment based on the overall impression** created by the name, bearing in mind the likely perception of the ordinary consumer.

[13] Similarly, in *Polyoak Packaging (Pty) Ltd v Polyoak (Pty) Ltd* (CT014NOV2014), the Tribunal held that **"the dominant feature of a name must be considered, and if this feature is identical to a registered trade mark, the likelihood of confusion is substantial."**

¹ 2024 (2) SA 296 (SCA); at para 24.

- [14] The principle of “**imperfect recollection**”, confirmed in *Amalgamated Beverage Industries Ltd v Consolidated Beverages Ltd*², is directly relevant: an ordinary consumer does not have the luxury of side-by-side comparison and may easily be confused by minor variations. In *Century City Apartments Property Services CC & Another v Century City Property Owners’ Association*³, the court incorporates and approves the reasoning from *Compass Publishing BV v Compass Logistics Ltd (EWHC)*⁴ stating that the visual, aural, and conceptual similarities must be assessed by reference to the overall impression created, bearing in mind their distinctive and dominant components.
- [15] In *Capital Estate and General Agencies (Pty) Ltd v Holiday Inns Inc*⁵, the court observed that the test is not whether the person actually confused is careful, but rather whether a “**substantial number of persons may be confused or deceived.**”

E. ANALYSIS

- [16] The opposed name incorporates the WEIR mark in its entirety. The addition of “ZA” and “Group” does not materially distinguish the First Respondent’s name from that of the Applicant. On the contrary, such additions are descriptive. In the South African context, “ZA” is an abbreviation for South Africa, which reinforces the false association with the Applicant’s established South African subsidiaries.
- [17] The Applicant’s WEIR trade mark is both registered and well-known in terms of section 35 of the Trade Marks Act 194 of 1993. This reinforces its protection and strengthens the argument that any use by unrelated entities is likely to cause deception or confusion.

² 1958 (2) SA 876 (A) at 878–879.

³ 2010 (3) SA 1 SCA at [13].

⁴ [2004] EWHC 520 (Ch).

⁵ 1977 (2) SA 916 (A), 929E–G.

[18] Applying the “imperfect recollection” principle, it is highly probable that an ordinary member of the public encountering the Respondent’s name would assume it forms part of the Applicant’s well-known group of companies.

[19] The Tribunal is persuaded by the reasoning in *Polyoak Packaging and Holiday Inns* that the risk of deception is not remote, but real and substantial.

F. FINDINGS

[20] The First Respondent’s registered company name is confusingly similar to the Applicant’s registered trade mark WEIR in contravention of section 11(2)(a)(iii).

[21] The First Respondent’s name falsely implies or suggests an association with the Applicant in breach of section 11(2)(b)(iii).

[22] The First Respondent’s name is likely to mislead members of the public in contravention of section 11(2)(c)(i).

G. ORDER

Accordingly, the following order is made:

[21] In terms of section 160(3)(b)(ii) of the Companies Act, the First Respondent is directed to choose a new name that is satisfactory and compliant with section 11 of the Act, within 60 (sixty) days of service of this order.

[22] In the event of the First Respondent’s failure to comply with paragraph (1) above, the Companies and Intellectual Property Commission (CIPC) is directed, in terms of section 160(3)(b)(ii), to record the Respondent’s company name as its registration number only.

[23] No order as to costs.

MINAH TONG-MONGALO

Panel Member