



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02326ADJ2025

IN THE MATTER BETWEEN:

THERMO KING CORPORATION

APPLICANT

THERMAL KING TRADING (PTY) LTD

FIRST RESPONDENT

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

SECOND RESPONDENT

Date of Decision: 3rd October 2026

DECISION

INTRODUCTION

1. . The Applicant **is** Thermo King LLC, a company organized in accordance with the laws of Minnesota, United States of America under registration number 570116 and having its principal place of business at 314 West 90th Street, Minneapolis, Minnesota, 55420, United States of America.

2. The First Respondent is THERMAL KING TRADING (Pty) Ltd. a private company registered under the company laws of South Africa under registration number 2022/303430/07, having its address at 292 Wilson Street, Fairland, Johannesburg, Gauteng, 2092, South Africa.
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. The Applicant was founded in, and adopted the THERMO KING trade mark, in 1938 and has since then expended a considerable amount of time, effort and money in designing, supporting, and promoting its THERMO KING product offering, generating thereby a substantial reputation and goodwill under its THERMO KING trade mark.
6. The Applicant has considerable common law rights in THERMO KING brand which has become recognisable to members of the relevant public in, inter alia, North America, Europe. the Middle East. India, Asia Pacific, Latin America, Russia and Africa.

7. The Applicant has been making continuous and extensive use of the "THERMO KING" brand and trade mark worldwide and in South Africa for decades. Consequently, the trade mark "THERMO KING" is "welt-known" in the Republic within the meaning of the Trade Marks Act 194 of 1993.

8. In or about February 2023, it came to the Applicant's attention that the Respondent had caused a company to be incorporated in South Africa, THERMAL KING TRADING (Pty) Ltd.

9. On 04 April 2023, the Applicant's attorneys attempted to deliver a letter of demand to the Respondent to its registered address recorded on CIPC, which letter provided the Respondent an opportunity to change its company name and cease all use of the trading name "THERMAL KING", and/or any name confusingly similar to the Applicant's THERMO KING trade mark. The Applicant's attorneys could not deliver the letter to the Respondent at the provided address, because the said address is the current address of a Gas Petrol Station. It is submitted that the Respondent provided a false address to CIPC for the registration of its entity. The Applicant's attorneys then proceeded to deliver a copy of the letter of demand to Mr Malek's (the sole director of the Respondent) residential address.

10. According to clause 11 of schedule 5 of the Companies Act, any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, that had not been spent or fulfilled before the effective date is a valid right or entitlement of, or obligation imposed on, that

person in terms of any comparable provision of the Act as from the date that the right, entitlement or obligation first arose.

11. In terms of the Oxford online dictionary, both the words THERMO and THERMAL are defined as "relating to heat". That said, it is submitted that for all intents and purposes the Respondent's company name wholly the Applicant's registered THERMO KING trade mark, but for a minor spelling variance. The Applicant conducted investigations to determine the extent, if any, of the use made by the Respondent of the THERMAL KING TRADING mark and company name. Such investigations failed to reveal any reference to the Respondent or its company name. One can therefore reasonably deduce that the Respondent is either not carrying out business (or is dormant) and/or that the Respondent intends to use the THERMAL KING TRADING company name in relation to offerings in the temperature control industry.

12. The word "THERMAL" implies that some form of temperature control service offering would fall within the Respondent's business activities. As indicated above, the Applicant's business itself includes the offering of goods and/or services within the temperature control industry and/or which may reasonably be related thereto.

13. The Applicant submitted that the Respondent's registration of the company name, THERMAL KING TRADING, conflicts with the provisions of sections 11(2)(a)(i) and (iii) and 11(2)(b)(i) of the Companies Act in that: 11 4) 8.11. 8.10.1. the Respondent's company name, THERMAL KING TRADING, is confusingly similar to the Applicant's registered trade mark and common law rights in and to its THERMO KING trade mark, and the registration of same by

the Respondent as its company name falsely implies or suggests, or is such as would reasonably mislead a person to believe incorrectly, that the company is associated with, linked to or endorsed by the Applicant or that the company is a subsidiary of the Applicant's group of companies. The use of the Respondent's company name, THERMAL KING TRADING, is likely to mislead or cause confusion to members of the public to believe incorrectly, that the company is a part Of or associated with the business of the or that it is a subsidiary of the Applicant's group of companies; The dominant and most memorable part of the company name is "THERMAL KING", and the addition Of the element "TRADING" is purely descriptive and is not sufficient to negate the likelihood of confusion or deception.

APPLICABLE LAW

14. 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

15. 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. The First Respondents Name is similar to the trade mark. Both Have the term King in them. While the Applicant has the term "Thermo", the First Respondent has the term "Thermal" in it. Both terms relate to heat. Thus, when members of the public see the First Respondents' name they may confuse it with the Applicants. Both sound similar and relate to heat. This may give members of the public the impression that the First Respondent is associated with the Applicant. This may affect the Applicants reputation and financially.

16. The First Respondent is thus ordered to change its name to one that does not include "Thermal King" in it.

ORDER

17. I find in favour of the Applicant

- a. The First Respondent is directed to change its name to one which does not incorporate “Thermal King” 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 2022/303430/07as 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