



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02427ADJ2025**

In the matter between:

SHAMBALA GAME RESERVE (PTY) LTD

Applicant

and

SHAMBALLA ON WATERFALL FARM (PTY) LTD

First Respondent

**COMMISSIONER OF THE COMPANIES AND
INTELLECTUAL PROPERTY COMMISSION**

Second Respondent

Presiding member: Richard Bradstreet

Date of decision: 27 March 2026

DECISION (Reasons and Order)

1. This application concerns a company name objection brought in terms of section 160 of the Companies Act 71 of 2008 ("the Act"), in which the Applicant seeks a determination that the First Respondent's name does not satisfy the requirements of section 11 of the Act. The Applicant further seeks a default order in terms of regulation 153 of the Companies Regulations 2011, the First Respondent having failed to file an answering affidavit in response to the application.

2. The basis of the objection is that the First Respondent's name incorporates the word "SHAMBALLA", which is alleged to be confusingly similar to numerous of the Applicant's registered trade marks incorporating the word "SHAMBALA", and that such use gives rise to a likelihood of confusion and misleading association. The Applicant contends that the result is a confusing similarity between the two company names, rendering the First Respondent's name impermissible in terms of section 11.

DEFAULT RELIEF

3. The application was duly filed with the Companies Tribunal, and served on the First Respondent on 11 October 2025 by way of the Sheriff. Service was also effected on the Second Respondent in accordance with the applicable practice requirements. The First Respondent failed to file any answering affidavit within the prescribed time period. The Applicant then instituted an application for default judgment in terms of regulation 153.
4. With regard to this application being brought by default, this Tribunal is satisfied that there has been adequate service, and thus compliance with regulation 153(2)(b). It also appears that the Applicant passes the "good cause" test in that a reasonable explanation is given as to why the application should be heard by the Tribunal, and there has been no undue delay in bringing the application.

APPLICABLE LEGAL FRAMEWORK

5. Section 160(1) of the Act provides that any person with an interest in the name of a company may apply to the Companies Tribunal for a determination whether the name satisfies the requirements of section 11.

6. Section 11(2) of the Act provides, inter alia, that a company name must not:
 - 6.1. be the same as a registered trade mark belonging to another person;
 - 6.2. be confusingly similar to such a trade mark; or
 - 6.3. falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company is part of or associated with another person.

Confusing similarity

7. “Similar” in section 11(2)(b) means “having a marked resemblance or likeness”, and that the offending name should immediately bring to mind the well-known trade mark or other name (*Bata Ltd v Face Fashions CC* 2001 (1) SA 844 (SCA)). The test is “whether, on a comparison of the two marks, it can properly be said that there is a reasonable likelihood of confusion of both marks are to be used together in a normal and fair manner, in the ordinary course of business”, and making this determination involves a value judgment (*Cowbell AG v ICS Holdings* 2001 (3) SA 941 (SCA) para 10).
8. Considering the two names in question, there is clearly a marked resemblance given that the dominant and memorable portion of the names are “Shambala” and “Shamballa” respectively, differing only by the inclusion of a second letter “L” in the latter. The use of the Applicant’s trade mark in this way gives rise to a confusing similarity between the mark and the First Respondent’s name, and a likelihood of deception as a result.
9. The remainder of the names, in my view, increase the likelihood of confusion since a farm and a game reserve both refer to rural land and differ only by their

use, and it is “the class of persons who are likely to be the purchasers of the goods in question” who must be taken into account (*Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd* 1993 (2) SA 307 (A) at 315F-G). Moreover, the words “on waterfall” suggest a farm that might practically be more for tourism purposes than agriculture.

10. Having regard to the two names in issue, there is, plainly, a substantial degree of resemblance between them. The dominant and memorable element in each is, respectively, “Shambala” and “Shamballa”, the only difference being the addition of a second “l” in the latter. In my view, the remaining components of the names serve to heighten, rather than diminish, the likelihood of confusion in that a farm and a game reserve alike denote rural land, the distinction between them lying principally in their use.
11. In that context, regard must be had to “the class of persons who are likely to be the purchasers of the goods in question” (*Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd* 1993 (2) SA 307 (A) at 315F–G). The words “on Waterfall” convey the impression of a farm which, in practical terms, is likely to be oriented towards tourism or leisure-related activities rather than conventional agriculture. It follows that the probable customers of the respective undertakings would include holidaymakers and persons seeking resort-style accommodation or experiences, thereby increasing the likelihood of confusion.
12. The addition of the second “L” would in my view be immaterial in the present case since the question is whether the similarity is such that it would confuse the “ordinary reasonable careful man, i.e. not the very careful man nor the very careless man” (*Link Estates (Pty) Ltd v Rink Estates (Pty) Ltd* 1979 (2) SA 276 (E) at 280).

13. Moreover, the doctrine of imperfect recollection must be taken into account. As was observed in *Ewing t/a The Buttercup Dairy Company v Buttercup Margarine Corporation Ltd* 1917 (34) RPC 225 at 232 and 238, the comparison is not undertaken with the two marks presented side by side; rather, allowance must be made for the ordinary imperfections of human memory, with the consequence that a substantial number of persons may be confused, if not deceived.
14. Applying that principle to the present matter, a person encountering the two names in the ordinary course is unlikely to scrutinise them with sufficient care to discern the presence of a second “L” in “Shamballa”. This is particularly so given that the words would seem to be phonetically indistinguishable when pronounced. It follows that the resemblance between the marks is such as to give rise to a real and substantial likelihood of confusion.
15. The First Respondent’s name is therefore such as would reasonably mislead a person to believe incorrectly that it is part of, or associated with, the Applicant. This arises from the incorporation of the dominant SHAMBALA element, the phonetic indistinguishability of the names, the contextual impression created by the full name.
16. The First Respondent’s name is confusingly similar to both the Applicant’s trade mark and registered name, and also falsely implies or suggests an association with the Applicant. It therefore does not satisfy the requirements of the Act.

ORDER

17. In the result, I make the following order:

- (a) The application for default order is granted.
- (b) The First Respondent is directed to:
 - (i) change its name to one which does not incorporate “SHAMBALA” or any confusingly similar word, and
 - (ii) file a notice of amendment to its Memorandum of Incorporation within 3 (three) months of the date of this order.
- (c) In the event that the First Respondent fails to comply with paragraph (b) above, the Second Respondent is directed to substitute the First Respondent’s registration number as its interim company name.

Richard Bradstreet

Member of the Companies Tribunal

27 March 2026