



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02688/ADJ/2026

In the matter between:

SUN INTERNATIONAL (SOUTH AFRICA) LIMITED

APPLICANT

and

SUNCITY TUCKSHOP (PTY) LIMITED

(2025/301196/07)

FIRST RESPONDENT

and

THE COMMISSIONER OF COMPANIES

SECOND RESPONDENT

Coram: Nomagcisa Cawe

Date of Decision: 28 September 2026

DECISION (Reasons and an Order)

1. INTRODUCTION

- 1.1. Applicant is Sun International (South Africa) Limited, a company duly incorporated in accordance with the company laws of South Africa, with its registered address at 6 Sandown Valley Crescent, Sandown, Sandton, 2146.
- 1.2. First Respondent is Sun City Tuckshop (Pty) Ltd, a company duly incorporated in accordance with the company laws of South Africa, with registration number 2025/301196/07, and having its registered address at Main Street, Bofolo, Fort Beaufort, 5720. First Respondent was incorporated in 2025
- 1.3. Second Respondent is the Companies and Intellectual Property Commission (“CIPC”), a juristic person established in terms of section 185(1) of the Companies Act 71 of 2008 (“the Act”).
- 1.4. This is an application in terms of Regulation 153(1) read with Regulation 153(2)(b) of the Companies Regulations of 2011 for a determination order that:
- (a) First Respondent’s name does not satisfy the requirements of section 11(2) of the Act; and
 - (b) First Respondent be directed to choose a new name that does not incorporate the words “Sun City”, as provided for in section 160 of the Act.

2. BACKGROUND

- 2.1. Applicant is a well-established and renowned owner of a chain of resorts, hotels and casinos, that operate under various names. One of these is the Sun City resort, a wholly owned subsidiary of the Applicant company, which first used its name in 1979 on a day-to-day basis in relation to all its activities and services.
- 2.2. On 9 April 2026 Applicant referred the matter to the Companies Tribunal for relief, on Form CTR142 accompanied by a founding affidavit deposed to by Brett Mark Hoppe, the General Manager of Sun City. This was after numerous attempts to settle the matter amicably yielded no positive results.

- 2.3 The above documents were served by the Sheriff of Fort Beaufort, at the address reflected on the registration documents of the First Respondent, being Main Street Bofolo, Fort Beaufort, Eastern Cape.
- 2.4 First Respondent had until 14 May 2026 to respond to the application, in terms of regulation 143. To date First Respondent has not responded to the application. In view of the lack of response from First Respondent, Applicant's representative filed an application for a default order against the First Respondent with the Tribunal.
- 2.5 A Supporting Affidavit by Nicole Yvonne Smalberger, a partner at Adams and Adams Attorneys Incorporated (Adams), the Applicant's attorneys of record, was submitted in support of the default order application.
- 2.6 I am satisfied that Regulation 153 has been satisfied as far as service is concerned. Service at a company's registered address is adequate service. The matter, therefore, is ripe to be dealt with on a default basis on the papers.

3. ISSUES

- 3.1 Applicant's representative contends that the dominant and memorable part of First Respondent's company name is confusingly and deceptively similar to Applicant's registered "Sun City" trade mark and is in contravention of Section 11(2) of the Act. Applicant has underscored the prejudice it will suffer if denied relief, especially because Applicant's "Sun City" trade mark has become an asset of enormous commercial value and importance to the Applicant. Any unauthorized use of this trademark, or of a confusingly or deceptively similar mark, will be damaging to the reputation and the business of the Applicant.

- 3.4 The crisp issue before the Tribunal is, therefore, for it to make a determination as to whether First Respondent's name is in contravention of section 11 of the Act or not.

4. APPLICABLE LAW

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

—
(1)....

(2) *The name of a company must— (a) not be the same as—*

... (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 trademark as contemplated in section 35 of the Trade Marks 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;

...

(b) not be confusingly similar to a name, trade mark, 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.” (All emphasis is mine).

5. EVALUATION

- 5.1 The Tribunal is called upon to evaluate whether the Respondent’s name satisfies the requirements of Section 11(2) of the Act. To evaluate the meaning of the words contemplated in section 11(2) the Tribunal relies on the guidance of the common law and case law, where applicable.
- 5.2 When the words of Applicant’s “Sun City” trademark are spoken out, they sound the same as First Respondent’s name, thus invoking the application of S11(2)(a)(iii) of the Act.
- 5.3 “Similar” in section 11(2)(b) of the Act would be “having a marked resemblance or likeness” and that the offending name should immediately bring to mind the well-known trade mark or other name. The test for “confusingly similar” is, as in the case of passing-off: “... a reasonable likelihood that ordinary members of the public, or a substantial section thereof, may be confused or deceived into believing that the goods or merchandise of the former are the goods or merchandise of the latter or are connected therewith. Whether there is such a reasonable likelihood of confusion or deception is a question of fact to be determined in light of the particular circumstances of the case **Adidas AG & Another v Pepkor Retail Limited (187/12) [2013] ZASCA3, 2013 BIP 203 203 SCA (28 February 2013).**
- 5.4 “Confusingly similar” in Section 11(2)(b) has to be examined carefully to determine if this is in fact so *in casu*. In considering case law on the concept, it must be as alike in a manner that will confuse the “ordinary reasonable careful man, i.e. not the very careful man nor the very careless man” **Link Estates and General Agencies (Pty) Ltd v Rink Estates (Pty) Ltd 1979 (2) SA 276 [E] at**

280. The “reasonable man” has been further qualified: “A rule of long standing requires that the class of persons who are likely to be the purchasers of the goods in question must be taken into account in determining whether there is a likelihood of confusion or deception” **Reckitt & Colman SA v SC Johnson and son SA (Pty) Ltd (203 of 1990)(1991) ZASCA 181 (28 November 1991)**. There is no doubt that this confusion would occur if the First Respondent is **not** registered.

- 5.5 In line with what was stated in **Ewing t/a The Buttercup Dairy Company v Buttercup Margarine Corporation Ltd 1917 (34) RPC at 232 and 238**, it can be concluded that confusion and/or deception may arise from the side-by-side use of the Applicant’s trade mark and the First Respondent’s name, which can lead to injury of the Applicant’s business, especially since it has no control whatsoever over the quality of services rendered by First Respondent. The doctrine of imperfect recollection has been explained by our courts in **Bata Ltd v Face Fashions CC 2001 (1) SA 844 (SCA)** thus: there is a probability that a substantial number of people will be at least confused, if not deceived, given the fact that if an individual does not have the two marks before him, side by side and that memory is often imperfect.

In the normal course of trade purchasers do not scrutinise minor details of a business. There is a high likelihood that Sun City Tuckshop could be mistaken for a subsidiary of the Applicant, especially because the Applicant’s Sun City brand is well-known and widely popular. If any of the goods or services offered by the First Respondent are defective, this would harm Applicant’s trade mark and reputation.

- 5.6 In **Cowbell AG v ICS Holdings 2001 (3) SA 941 (SCA)**, the court said: “the decision involves a value judgment and the ultimate test is whether, on a comparison of the two marks, it can properly be said that there is a reasonable likelihood of confusion if both marks are to be used together in a normal and fair manner, in the ordinary course of business.”

- 5.7 In the case of **Polaris Capital (Pty) Ltd v The Registrar of Companies and Polaris Capital Management Inc.** (unreported judgment, Case No. 11607/2005, CPD), the learned judge commented on undesirability in terms of Section 45 (2) of the 1973 Companies Act: “It is submitted that by allowing the close corporation’s name to remain on the register, in addition to causing deception and confusion, its registration will hinder the registrar’s role in maintaining and promoting good governance and administration of corporate entities in the interest of the general public.”

Thus, permitting the First Respondent to keep the name “Sun City” in its company name will create confusion and hinder the Registrar from maintaining and promoting good governance and administration of a corporate entity in the interest of the general public. It is evident therefore that the name ‘Sun City ’ as incorporated in the First Respondent’s company contravenes Section 11(2) as argued by Applicant. The addition of the words “SPAZA SHOP” does not distinguish the First Respondent from the Applicant.

6. FINDINGS

- 6.1 Based on all the particular circumstances of this matter, I find that the balance of convenience favours the Applicant.
- 6.2 Applicant has shown that First Respondent has transgressed the provisions of Sections 11(2) of the Act. Applicant is, therefore entitled to the order as prayed for, in terms of Section 160 of the Act.
- 6.3 The relief sought by the Applicant is granted as set out below.

7. ORDER

- 7.1 An administrative order is made in terms of Section 160(3)(b)(ii) that First Respondent change its name to one which does not incorporate the words ‘**Sun City** ’ as it is in contravention of Sections 11(2) of the Act.

- 7.2 First Respondent is hereby ordered to change its name within 60 (calendar) days of date of receipt of this order and to file a notice of amendment of its Memorandum of Incorporation.
- 7.3 In the event that the First Respondent does not comply with this order, the Commissioner of the CIPC is directed to change the First Respondent's name to its registration number (2025/301196/07), as it's temporary name, within sixty (60) business days from date of First Respondent's failure to comply.
- 7.4 The Registrar of the Companies Tribunal is directed to serve the order on the Respondents.
- 7.5 No order is made as to costs as the matter is unopposed.

Nomagcisa Cawe: Member of the Companies Tribunal