IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01655ADJ2024

In the matter between:

DR. ING. H.C. F. PORSCHE AKTIENGESELLSCHAFT Applicant

and

PORSCHE APARTMENTS (PTY) LIMITED 1st Respondent

(Registration Number. 2014/097496/07)

COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION 2nd Respondent

Date of Decision: 28th July 2024

DECISION

INTRODUCTION

1. The Applicant is **DR. ING. H.C. F. PORSCHE AKTIENGESELLSCHAFT** a German Company having its registered office in Porscheplatz 1 Stuttgart Germany.

2. The First Respondent is **PORSCHE APARTMENTS (PTY) LIMITED**. It is a duly incorporated South African company, registered under number 2014/097496/07.

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. On 8th March 2024 the applicant filed its company name objection with the Companies Tribunal and the applicant served the company name objection on the respondent. Despite being informed of the application the first respondent does not oppose it.

6. Despite various correspondence the Respondent has failed to deregister its name

7. The Applicant submits that the Respondents name is confusingly similar to its name and trademark.

8. The Applicant has a number of trademarks in South Africa. The Applicant's argued that its PORSCHE trademark has been used, globally and in South Africa since the 1950's, in relation to a wide range of goods and services of the Applicant. Extensive time, money and effort has been invested in the development and establishment of the Applicant's PORSCHE brand. Such is the Applicant's fame that its trademark transcends motor vehicles and services performed in relation to motor vehicles. The brand is widely used in relation to a range of consumer merchandise, including but limited to apparel; accessories; leather goods; fragrances; toys; homeware; sporting goods; luggage; pet accessories; stationery; electronic devices; design and consultancy services, including in property development

9. The Applicant argues that the Respondents name is confusingly similar to the Applicants and would deceive the public.

APPLICABLE LAW

10. 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

(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

11. Section 11 (2) of the Companies Act requires me to determine whether the name of the respondent is confusingly similar to that of the Applicants name and trademarks. They both have the word Porsche in them. When members of the public see the respondents name, they will think of the Applicant who has a global brand. This may give members of the public the impression that it is owned by the Applicant with the potential to cause reputational damage and financial harm to the Applicant.

12. The purpose of section 11 of the Companies Act is to protect names from being passed off by companies registering similar names at the expense of the original name holder of the company or trademark. I thus find in favour of the Applicant

ORDER

a. I find in favour of the Applicant
b. The First Respondent is directed to change its name to one which does not incorporate and is not confusingly and or deceptively similar to Applicant's**.** It should not include the name “Porsche” in any form.
c. 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.
d. 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 respondent’s name to is registered company number being 2014/097496/07 as the Respondent’s interim company name on the Companies register.
e. The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
f. This Determination must be served on the Respondent and the Registrar of Companies and Intellectual Property Commission.

MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL