IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02288ADJ2025**

In the matter between:

IMPERIAL LOGISTICS (PTY) LTD	Applicant
and	
INNOVATION IMPERIAL (PTY) LTD	First Respondent
COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Second Respondent

Presiding member: Richard Bradstreet
Date of decision: 2 March 2026

DECISION (Reasons and Order)

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1. This is an application in terms of section 160 of the Act for 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, no answering affidavit having been filed.

2. The Applicant is Imperial Logistics (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa, and

the proprietor of registered trade marks incorporating the word IMPERIAL, including IMPERIAL LOGISTICS, as appears from the founding papers.

3. The First Respondent is Innovation Imperial (Pty) Ltd, a private company incorporated in terms of the Companies Act 71 of 2008 ("the Act"), with the impugned name reflected in the records of the Companies and Intellectual Property Commission ("CIPC").

4. The Second Respondent is the Commissioner of the CIPC, cited in its official capacity as the custodian of the companies register.

APPLICATION FOR DEFAULT JUDGEMENT

5. Regulation 153(1) permits an initiating party, where no response has been filed, to apply for a default order. Regulation 153(2) empowers the Tribunal to make an appropriate order if satisfied that the application was adequately served. No answering affidavit or notice of opposition has been delivered within the prescribed time period.

6. I am satisfied on the papers that service was effected in accordance with the Regulations and that the matter properly proceeds on an unopposed basis. However, the absence of opposition does not entitle an applicant to relief as of right. The Tribunal must still be satisfied that the Applicant has established, on a balance of probabilities, that the impugned name contravenes section 11 of the Act.

RELEVANT LAW

7. Section 11(2) of the Act provides that a company name must, *inter alia*:

    7.1. Not be confusingly similar to such names, unless authorised (section 11(2)(*b*)); and

7.2. Not falsely imply or suggest, or reasonably mislead a person into believing incorrectly, that the company is part of, or associated with, another entity (section 11(2)(*c*)).

8. The test for confusing similarity involves an objective assessment of the overall impression created by the names, having regard to their dominant and distinctive elements. The comparison must consider the likely perception of the ordinary reasonable person with imperfect recollection.

9. "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)).

10. "Confusing" similarity is determined by asking whether there is "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" (*Adidas AG & another v Pepkor Retail Limited* (187/12) [2013] ZASCA 3 (28 February 2013)).

11. Any person with an interest in the name of a company is, in terms of section 160(1) of the Act, entitled to bring an application to the Companies Tribunal (in the prescribed manner) for determination of whether the name satisfies the requirements of section 11 of the Companies Act.

12. Such application may be made "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" (section 160(2)).

13. The Companies Tribunal, after considering such application ("and any submissions by the applicant and any other person with an interest in the proposed name that is the subject of the application"):

13.1. "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 [the] Act" (section 160(3)(*a*)), and

13.2. "may make an administrative order directing . . . 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" (section 160(3)(*b*)(ii)).

ANALYSIS

14. The Applicant relies on registered trade marks incorporating the word IMPERIAL – namely, IMPERIAL and IMPERIAL LOGISTICS. While the word "logistics" in the latter implies to some the type of services covered by the class in which it is registered (i.e. class 39, which includes: transport; packaging and storage of goods; and travel arrangement, the IMPERIAL mark is registered in both class 39 and class 42. The latter covering scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; and design and development of computer hardware and software.

15. It is necessary to recognise at the outset that "imperial" is an ordinary English word. It conveys notions of empire, sovereignty, supremacy or pre-eminence. It is not an invented word nor one inherently distinctive in the abstract.

16. The law does not permit a trader to monopolise the ordinary use of a common English word merely because that word forms part of its registered trade mark.

The protection afforded by section 11 must therefore be applied in a manner that balances legitimate trade mark rights with the public interest in allowing the fair use of language in company names. This notwithstanding, the Applicant holds a trade mark in the word itself, and not only when couples with the descriptive “logistics”.

17. The enquiry remains whether the impugned name, viewed as a whole, is confusingly similar to the registered mark or creates a misleading impression of association. When comparing the name with IMPERIAL LOGISTICS, the structure, sequencing and conceptual impression of the two names differ materially in that the Applicant’s name combines “IMPERIAL” with “LOGISTICS”, clearly denoting a logistics enterprise operating under the IMPERIAL brand, while the First Respondent’s name commences with “INNOVATION” and concludes with “IMPERIAL”, without any reference to logistics. Visually and phonetically, the names do not read or sound alike as composite expressions. The placement of the words differs. The rhythm and emphasis differ. The conceptual messages conveyed differ.

18. What remains to be considered is whether INNOVATION IMPERIAL appearing in the First Respondent’s name is undesirable given the Applicant’s ownership of the INNOVATION mark, which appears in its entirety in the impugned name.

19. It is so that the word IMPERIAL is registered as a trade mark in the name of the Applicant. That registration stands and the Tribunal must give effect to section 11(2)(b), which protects registered marks. However, “imperial” remains an ordinary English word. It is not an invented expression nor inherently distinctive in the abstract. That does not invalidate the registration, but it is relevant to the scope of protection that the mark can reasonably claim in the context of section 11. The Tribunal is not required to determine whether IMPERIAL ought to have been registered – it is registered. The question is narrower: whether the company name INNOVATION IMPERIAL (PTY) LTD is confusingly similar to IMPERIAL, or whether it creates a misleading impression of association.

20. The impugned name does not consist of IMPERIAL alone. It is a composite expression. Although the expression “innovation imperial” may at first glance appear to be French, it is not grammatically correct in that language. In French, the adjective would be required to agree with the feminine noun “*innovation*”, and the correct form of the adjective would be “*impériale*”. The expression must therefore be considered as a composite of ordinary English words for purposes of this analysis.

21. The word “innovation” precedes “imperial” and materially alters the overall commercial impression. When the names are viewed as they would be encountered in ordinary life – not dissected word by word, but read as a whole – INNOVATION IMPERIAL does not read as merely IMPERIAL; it reads as a distinct phrase, with its own cadence and emphasis.

22. The incorporation of a registered mark into a longer name does not automatically render the name confusingly similar. That is especially so where the mark consists of a common English word whose distinctiveness lies in its particular commercial context.

23. However, the Applicant’s IMPERIAL mark is registered, *inter alia*, in class 42, which – as already mentioned – includes scientific and technological services, research and design services, and the design and development of computer hardware and software. Those categories of services are conceptually aligned with the notion of “innovation”.

24. In that context, the addition of the word “Innovation” before “Imperial” does not necessarily distinguish the name from the registered mark. Rather, it may be perceived as describing the field of activity within which the IMPERIAL brand operates – namely innovative or technological services.

25. Where the additional word in a composite name is descriptive of, or closely related to, the services covered by the registered mark, its capacity to dispel confusion is reduced. The emphasis may still fall on the distinctive element "Imperial", with "Innovation" operating as a qualifier rather than as an independent source identifier. The shared presence of a common English word does not, without more, establish confusing similarity.

26. In *Adidas AG & another v Pepkor Retail Limited* (187/12) [2013] ZASCA 3 (28 February 2013) at para 28, the Supreme Court of Appeal emphasised that the question of whether a reasonable likelihood of confusion or deception exists "*is a question of fact to be determined in the light of the particular circumstances of the case*".

27. It is also "the class of persons who are likely to be the purchasers of the goods in question [which] must be taken into account in determining whether there is a likelihood of confusion or deception" (*Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd* 1993 (2) SA 307 (A) at 315F-G).

28. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 640G-641E, the Appellate Division held that the determination of the question of whether there is a likelihood of confusion

> "*involves essentially a comparison between the mark used by the defendant and the registered mark and, having regard to the similarities and differences in the two marks, an assessment of the impact which the defendant's mark would make upon the average type of customer who would be likely to purchase the kind of goods to which the marks are applied. . . The marks must be viewed as they would be encountered in the marketplace and against the background of relevant surrounding circumstances.*" (emphasis added)

29. Viewed as they would be encountered in the marketplace, therefore, there does appear to exist a reasonable likelihood that the First respondent's name would be perceived as connected to, or associated with, the proprietor of the

IMPERIAL mark. This conclusion rests particularly on the fact that the IMPERIAL mark is registered in class 42. In that context, the addition of the word “Innovation” does not distinguish the name from the registered mark; rather, it reinforces the conceptual link with the very services for which the mark enjoys protection. The dominant and memorable element of the composite expression remains “Imperial”, which is reproduced in its entirety.

ORDER

30. It is accordingly ordered that:

a) the application is permitted to be brought by default;

b) the First Respondent is directed to change its name to one which does not consist of, or incorporate, the word TRINCO, or any other mark which is confusingly and/or deceptively similar to the Applicant’s TRINCO trade mark, nor one that would reasonably mislead a person to believe that the First Respondent is associated with the Applicant and/or entities associated with the TRINCO trade mark;

c) failing compliance with para (b) within two months from the date of this order, the Second Respondent is directed to change the First Respondent’s name to its registration number, as its interim company name;

d) the Tribunal’s Recording Officer (Registrar) is directed to serve this order on the First and Second Respondents.

ORDER

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

(a) The Applicant’s application for condonation is granted.

(b) The application for default order is granted.

(c) The First Respondent is directed to choose a new name which does not incorporate the mark IMPERIAL, or any mark confusingly similar thereto, in a manner that suggests or implies activities falling within the scope of the Applicant's registered trade mark classes, including but not limited to class 39 (transport, packaging and storage of goods, and travel arrangement) and class 42 (scientific and technological services, research and design services, and the design and development of computer hardware and software).

(d) In the event that the First Respondent fails to comply with paragraph (c) above, the Second Respondent is directed to substitute the First Respondent's registration number as its interim company name.

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Richard Bradstreet
Member of the Companies Tribunal

3 March 2026