IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no: CT02502/ADJ/2025

In the matter between:

ABSA BANK LIMITED Applicant

and

ABSALON INVESTMENT (PTY) LIMITED 1st Respondent

(Registration No 2025/444464/07)

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION 2nd Respondent

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Presiding Member of the Companies Tribunal: HLALELENI KATHLEEN DLEPU

Date of Decision: 29th January 2026

DECISION and REASONS

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1. **INTRODUCTION**

1.1 The Applicant is Absa Bank Limited a public company incorporated in accordance with the company laws of South Africa with its registered address at 15 Troye street Johannesburg. The Applicant is the proprietor of the Absa trademark in South Africa.

1.2 The First Respondent is Absalon Investment (Pty) Limited a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2025/444464/07 having its registered address at 8407 Snake Park, Block 27, Zamdela, Free State,1949.

1.3 The Second Respondent is the Companies and Intellectual Property Commission (CIPC) established by Section 185 of the Companies Act with its address at DTI Building, Block F, Meintjies Street, Sunnyside, Pretoria. The Applicant joins the Second Respondent as a party to these proceedings only in so far as the relief requested in so far as it is responsible for the registration of new companies, the regulation of their names and maintenance of the Register of Companies ,however the Applicant does not otherwise seek any relief or costs from the Second Respondent.

2. THE APPLICATION

2.1 The Applicant brought this application in terms of Section 160 of the Companies Act seeking an order as follows:

2.1.1 Granting a default order against the First Respondent's failure to respond to the Applicants' application that seeks an order that the First Respondent's company name, Absalon Investment (Pty) Limited does not satisfy the

requirements of Section 11 and 160 read with Regulation 153) (ii) of the Companies Act, 71 of 2008,

2.1.2 That the First Respondent be directed in terms of Section (160 (3)(b)(ii) to choose a name which does not consist of or incorporate, the mark Absa or Absa Investments, or any other mark which is confusingly and/or deceptively similar to the Applicant's Absa or Absa Investment trademark:

2.1.3 That in the event that the First Respondent fails to comply with the order set out in paragraph 2.1.2 above within 60 days from the date of the order, that the Second Respondent be directed in terms of Section 160(3)(b)(ii) read with Section 14(2)of the Companies Act ,to change the First Respondent's name to 2025/444464/07 (Pty) Ltd'' as the First Respondent's interim company name on the Companies Register and

2,1,4 That an order as to costs be grated in favour of the Applicant in terms of Regulation 156 of the Act if opposed.

2.2 The Applicant has an interest in the name of the First Respondent within the meaning of Section 160(1) of the Act to file this Application to the Companies Tribunal. The Applicant's interest will appear from the facts which were initiated and documented by the Applicant in its affidavit in particular, the Applicants trademark rights in and to the Absa trademark.

3 THE BACKGROUND TO THE APPLICATION FOR JUDGEMENT BY DEFAULT

3.1. On the 23rd of July 2025 the Applicant instructed the Attorneys of record Adams & Adams to formally object to the use of company name Absalon Investment (Pty) Limited by the First Respondent. The Attorneys of record further requested the First Respondent to cease using the name Absalon Investment voluntarily and also to cease all use of the mark Absa, or any confusingly similar mark, in the cause of trade .An e-mail enclosing the letter was sent to the e-mail address morenatech5@gmail.com which was recorded as being the e-mail address of the director of the First Respondent ,Mr Mochologi Absalon, on the incorporation documents of the First Respondent .

3.2 No response was received from the First Respondent and subsequent follow ups were made on the 11th of August 2025 telephonically. During the telephone discussion between the parties, the First Respondent undertook to change the company name to a name not incorporating the Applicant's well-known Absa trademark. The First respondent failed to change the name .Further telephone calls including emails failed to yield any results, and with no response from the First Respondent the Applicant instructed its Attorneys of Record to prepare the Application terms of Sections 11(2) and 160 of the Act .The supporting affidavits to the Applicants' founding affidavit were deposed to by Dale Timiothy Healy and confirmatory affidavit by Esme Van Rooyen .

3.3 The Applicant instructed its attorneys to launch an application in terms of section 160 of the Companies Act read with sections 11(2)(b) and 11(2)(c)(i) the First Respondent. the Application was filed on the 2nd December 2025 a copy of the application together with the supporting affidavit was served on the First Respondent, and the main Application was also sent to the Second Respondent on the 3rd December 2025 the First Respondent was also served electronically followed by a service from the Sheriff on the 4th December 2025 at no 8407 Snake Park ,Block 27,Zamdela,Free State being the First Respondent's registered address .The First Respondent had until the 8th January 2026 to respond to the application but failed to do so. .

3.4 To date, neither the First Respondent nor anyone acting on its behalf has responded nor oppose the application.

.3.5 I am satisfied that the applicant has made out a case for the main application to be considered by default against the First Respondent.

4 <u>THE APPLICANT'S CASE</u>

4.1 The Applicant seeks the order against the First Respondent for the following reasons;

4.2.2 That the Applicant has an interest in the name of the First Respondent within the meaning of Section 160 (1) of the Act and it is the proprietor of amongst others, various South African ABSA registered trademark rights,

4.2.3 That the First Respondent's company name offends against the provisions of Sections 11(2)(b) and 11(2)(c)(i) of the Companies Act 71 of 2008 incorporating a mark that is identical and /or confusingly similar to the Applicant's registered ABSA trademark and that the use of the company name is likely to falsely imply or suggest or be such as would reasonably mislead a person to believe incorrectly that the First Respondent is part of or associated with the Applicant,

4,2.4 That the Applicant is the proprietor in South Africa of, inter alia. the following trademarks in summary: -

(i) **Trademark no 1991/07473 ABSA** in class 36 in respect of "Insurance, financial, banking and investment services in insurance brokers and agents, insurers, financiers, investment consultants, agents and brokers for bonds and other securities; real estate valuation, management and development; leasing and hire purchase services; estate agents; building societies; services related to credit including card facilities".

(ii) **Trademark registration no 1991/10305 ABSA** in class 36 in respect of "Insurance and financial.

(iii) **Trademark registration no 2018/27776 ABSA** in class 35 in respect of "Advertising; business management; business administration; office functions; offering for sale and the sale of goods in the retail and wholesale trade'**;**

(iv) **Trademark registration 2011/01853 ABSA INVESTMENTS** in class 36 in respect "insurance; financial affairs; monetary affairs ;real estate affairs;"

(v) **Trademark registration no 2019/00997 ABSA INVESTMENT TRACKER** in class 36 in respect of "Insurance; financial affairs; monetary affairs; real estate affairs';

4.2.5 The above trademarks are still valid and enforceable; copies of the trademark register pages were attached to the Applicants affidavit marked "3.1 to 3.5". The Applicants trademarks have been registered for several years prior to the incorporation of the First Respondent.

5.. **APPLICABLE LAW**

5.1 **SECTION 160(1) OF THE COMPANIES ACT PROVIDES THAT**

"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".

*5.*2 Section 160(2)(b) of the Companies Act provides that:

"An application in terms of Subsection (1) 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, in any other case".

5.3 Sections 11(2) (a)(iii), 11 (2)(b)(iii); and 11(2) (c) (i) of the Companies Act, in as far as they are applicable, read as follows.

"(2) The name of a company must

(a) not be the same as –

(i) …

(ii) …

(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 trade

mark 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, trademark, mark, word, or expression contemplated in paragraph (a) unless-*

(i) *…*

(ii) *…*

(iii) *in the case of a name similar to a trademark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trademark, or is authorised by the registered owner or to use it; or …*

(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…"*

5.4 the question is whether the First Respondent's name and the Applicant's trademark are confusingly similar as envisaged in Section 11(2)(b) (iii) read with Section 11 (2)(a)(iii) of the Companies Act.

5.5 The Applicant , founded in 1991 came about the through the Amalgamated Banks of South Africa .To date the Applicant is one of the leading retail banks in Africa and the mark ABSA has become a household name in South Africa, the report can be located at https://african.business/2023 .The Applicant's regional ranking in South Africa is 4th and its overall ranking is 7th a testament to its reputation symbolised by its ABSA trademark. The ABSA trademark and name are of exclusive use by the Applicants and also protected under the common law , and although the nature of the First Respondent's Company is not known or clear, it appears to be dealing with investments, thus the use of the name ABSALON INVESTMENTS by

the First Respondent is confusingly similar to the Applicant's name and trademarks. This elevates the risk of confusion between the Applicant's trademark and the First Respondent's name, products, and services in the marketplace.

5.6 I further agree that the confusion and/or deception, can lead to injury to the Applicant's business. This is particularly so when it is taken into account that the Applicant has absolutely no control whatsoever on the quality and type of services offered and rendered by the First Respondent.

.5.7 The law protects name and trademarks, this protection is illustrated succinctly *In* ***Plascon-Evans Paints (TVL) Ltd. V Van Riebeeck Paints (Pty) Ltd. (Plascon-Evans, CORBETT JA quoted*** *MARGO J, delivering the judgment in International Power Marketing (Pty) Ltd v Searles Industrials (Pty) Ltd. 1983(4) SA 163 (T), as follows on the meaning of the words "as to be likely to deceive or cause confusion".*

"The main legal principles relevant to the decision of the instant case may be briefly summarised as follows: -

In an infringement action the onus is on the plaintiff to show the probability or likelihood of deception or confusion.... it is enough for the plaintiff to show that a substantial number of persons will probably be confused as to the origin of the goods or the existence or non-existence of such a connection … ***the comparison must be made with reference to the sense, sound and appearance of the marks.*** *The marks must be viewed as they would be encountered in the marketplace and against the background of relevant surrounding circumstances.* ***The marks must not only be considered side by side, but also separately. It must be borne in mind that the ordinary purchaser may encounter goods, bearing the defendant's mark, with an imperfect recollection of the registered mark and due allowance must be made for this.*** *If each of the marks contains a main or dominant feature or idea the likely impact made by this on the mind of the customer must be taken into account. As it has been put, marks are*

remembered rather by general impressions or by some significant or striking feature than by a photographic recollection of the whole. And finally, consideration must be given to the manner in which the marks are likely to be employed as for example, the use of name marks in conjunction with a generic description of the goods".

5.8 CORBETT JA: stated further at paragraph 47 in Plascon Evans "…in my view, a purely verbal comparison is not enough. As I have said, in cases such as this the Court must transport itself to the marketplace and try to visualize how customers of the goods, in relation to which the marks are used, would react ".

5.9 In the matter of **Bata Ltd v Face Fashion CC and another 2001 (1)SA 844(SCA**) the court adopted the approach was that were it was said that the likelihood of confusion must "be appreciated globally'' and that the 'global appreciation of the visual ,aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks ,bearing in mind ,in particular, their distinctive and dominant components '"

5.10 In the present case. a direct comparison of the Applicant's trademark and the First Respondent's name highlight the central issue at hand.

5,10.1 The Applicant's mark **ABSA** is well-known and distinctive.

5.10.2 The Respondent's company name **ABSALON INVESTMENTS**, feature :" **ABSA**" as a dominant. memorable and distinctive element, and fails to differentiate the Respondent from the Applicant

6 . **FINDINGS**

6.1 I find that the Applicant has shown good cause to bring this application under section 160 of the Companies Act.

6.2 I further find that the First Respondent's name is so confusingly similar to the Applicant's trademark that it falsely implies or suggests that, or that it reasonably mislead a person to believe incorrectly, that the Company is part

of, or associated with, the Applicant in contravention of section 11(2)(c) of the Companies Act.

6.3 Considering the conspectus of the cases cited above and the guidance from the above cases, I conclude that the First Respondent's name runs foul of the provisions of sections 11(2)(b)(iii) read with section 11(2)(a)(iii) and Section 11(2)(c) (i) of the Companies Act.

7 **ORDER**

I hereby grant the following relief by default judgement.

7. 1 The First Respondent is ordered to change its name to one which does not consist of, or incorporate, the mark **ABSALON ,** or any other mark which is confusingly and/or deceptively similar to the Applicant's **ABSA** trademark

7 2 The Second Respondent is directed to change the name of the First Respondent to its registration number, no **2025/44464/07 (Pty) Limited** in the event of the First Respondent not complying with point 7.1 above within 3 months from the date of this order; and

7..3 The Second Respondent notify the First Respondent within 14 days of this order.

7.4 No order as to costs.

H K Dlepu Member or the Tribunal