



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT01204ADJ2022**

In the matter between:

**7-ELEVEN INC**

First Applicant

**7-ELEVEN INTERNATIONAL LLC**

Second Applicant

and

**7 ELEVEN SUPERSTORE (PTY) LTD**  
(Registration number: 2020/465311/07)

First Respondent

**THE REGISTRAR OF COMPANIES**

Second Respondent

---

### **DECISION** (Reasons and Order)

---

#### **INTRODUCTION**

1. The Applicants are 7-ELEVEN INC and 7-ELEVEN INTERNATIONAL LLC, companies organised and subsisting under the laws of the States of Texas and Delaware respectively, both having their principal place of business in Texas, U.S.A, and forming part of the 7-Eleven Group of Companies.

2. This application is brought by both Applicants together because the relevant trademarks are being transferred from the First Applicant to the Second Applicant as part of a restructuring of the companies in the group.
3. The First Respondent is a South African company incorporated in June 2020, in terms of the Companies Act 71 of 2008 (“the Act”), having its registered office in Frankfort, Free State, South Africa. The Disclosure Certificate issued by the Companies and Intellectual Property Commission (“CIPC”), and annexed to the founding papers in this application indicates that the First Respondent’s name was changed from “Abdullah Zameer Trading” approximately five months after its incorporation.
4. The Applicants object to the First Respondent’s use of its current name on the basis that this amounts to an unauthorised use of the 7-ELEVEN trade mark, which has been continuously and extensively used since 1927. The Applicant’s allege that their use of the name and trade mark internationally has caused the Applicants to gain “a significant reputation in the convenience store industry worldwide under the 7-ELEVEN name and trade mark, which has become synonymous with the Applicants’ group of companies and service offerings”.
5. In May 2022, the Applicants, through their attorneys, sent the First Respondent a letter of demand calling on it to, *inter alia*, cease all unauthorised use of the 7-ELEVEN name and trade mark.
6. The Applicants now approach the Tribunal in terms of section 160(1) of the Act to determine whether the name “7 Eleven Superstore (Pty) Ltd” complies with the requirements of section 11 of the Act. Since the First Respondent has neither responded to the Applicant’s demand, nor ceased use of the name objected to by the Applicants on the aforesaid basis, the Applicants have

brought a default application in terms of regulation 153 of the Companies Regulations.

## **RELEVANT LAW**

7. A company's name, in terms of s 11 of the Companies Act 71 of 2008, must:
  - 7.1. "not be the same as [nor] confusingly similar to . . . 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" (s 11(2)(a)-(b)), and
  - 7.2. "not 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, any other person or entity" (s 11(2)(c)(i)).
8. Any person with an interest in the name of a company is, in terms of s 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 s 11.
9. 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" (s 160(2)).
10. 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"):
  - 10.1. "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” (s 160(3)(a)), and

10.2. “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” (s 160(3)(b)(ii)).

11. In relation to default applications,

11.1. “[i]f a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal” (regulation 153(1)), and

11.2. on such application, “the Tribunal may make an appropriate order – (a) after it has heard any required evidence concerning the motion; and (b) if it is satisfied that the notice or application was adequately served” (regulation 153(2)).

## **APPLICANTS’ SUBMISSIONS**

12. The Applicants submit, in relation to their use of the “7-ELEVEN” name and trademark, *inter alia*, that:

12.1. the “7-Eleven” group of companies has adopted the “7-ELEVEN” trade mark and name for the specific purpose of identifying and distinguishing its goods and services from those of others, and is accordingly the lawful and true proprietor of the trade mark worldwide;

- 12.2. the “7-ELEVEN” trade mark is used worldwide in relation to, *inter alia*, retail convenience stores, including – but not limited to – the premises of gas and/or fuel refill stations, and services related thereto;
  - 12.3. the “7-ELEVEN” trade mark has – as a result of the Applicants’ extensive use and promotion thereof – acquired a substantial reputation and goodwill, and become well-known;
  - 12.4. the Applicants have gained a significant reputation in the convenience store industry worldwide under the “7-ELEVEN” name and trade mark by virtue of their continuous and extensive use thereof since 1927; and
  - 12.5. the “7-ELEVEN” name and trademark have become synonymous with the Applicants’ group of companies and service offerings.
13. The Applicants, moreover, make the following submissions regarding the First Respondents name, on comparing it to the First Applicant’s trade mark (“7 ELEVEN”) *and* its company name (7-Eleven Inc):
- 13.1. the First Respondent’s name wholly incorporates 7-Eleven’s well-known trade name and trade mark;
  - 13.2. the dominant and most memorable part of the First Respondent’s name is “7 ELEVEN”, and that the “SUPERSTORE” element of the name serves to indicate that the First Respondent provides the identical services as those provided by the Applicants under the 7-ELEVEN trademark – namely, retail convenience store related services;
  - 13.3. the First Respondent’s name falsely implies or suggests, or is such as would reasonably mislead a person to believe incorrectly, that the First Respondent is associated with, linked to or endorsed by the Applicants

or that the First Respondent is a subsidiary of the Applicants' group of companies, neither of which is the case; and

- 13.4. the addition of the non-distinctive and descriptive word "SUPERSTORE" in the First Respondent's Name is not sufficient to negate the likelihood of confusion or deception arising amongst members of the public.
14. The Applicants submit that the objection to the First Respondent's name has been filed within a reasonable time after the time of registration considering that they became aware of the name in or around March 2022, sent a letter of demand to the First Respondent in May 2022, and proceeded to prepare and launch their objection when no substantive response to the letter was received.
15. Accordingly, the Applicants submit that the First Respondent's registration of its current name is in conflict with the provisions of s 11(2)(a)(iii) and s 11(2)(b)(i) of the Companies Act, and that the Applicants are therefore entitled to the appropriate relief.

## **EVALUATION AND FINDINGS**

16. With regard to this application being brought by default in terms of regulation 153(1), this Tribunal is satisfied that there has been adequate service, and thus compliance with regulation 153(2)(b).
17. 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.
18. The "7-ELEVEN" name and trade mark are well-known in South Africa, and generally associated with retail convenience stores operated by companies affiliated with the 7-Eleven group of companies.

19. The First Respondent's name wholly incorporates the well-known name and trade mark used for many years by the Applicants' group of companies, and the inclusion of "superstore" in the First Respondent's name implies a similar business offering to the 7-Eleven group of companies.
20. The First Respondent's name, therefore:
  - 20.1. is confusingly similar to the "7-ELEVEN" trade mark belonging to a person other than the First Respondent, and
  - 20.2. is such that would reasonably mislead a person to believe incorrectly, that the company is part of or associated with the 7-Eleven group of companies.
21. The omission of the hyphen and/or addition of the non-distinctive and descriptive word "Superstore" in the First Respondent's name does not negate the similarity between it and the "7-ELEVEN" trade mark, nor will it be less likely to reasonably mislead a person into assuming an incorrect association between the First Respondent and the 7-Eleven group of companies.
22. For the above reasons, the First Respondent's name does not satisfy the requirements of section 11 of the Companies Act 2008.

## **ORDER**

23. It is accordingly ordered that:
  - a) the First Respondent is directed to change its name to one which does not incorporate and is not confusingly to the "7-ELEVEN" trade mark within 60 (calendar) days of receipt of this order, and to file a notice of amendment to its memorandum of incorporation;

- b) failing compliance with paragraph (a), on the expiry of the 60 day period, the CIPC is directed – in terms of section 160(3)(b)(ii) read with section 14(2)(b)(i) of the Companies Act – to change the First Respondent’s name to its registration number followed by “(South Africa)” and the mandatory suffix as the company’s interim name on the companies register;
- c) the Tribunal’s Recording Officer (Registrar) is directed to serve this order on the First and Second Respondents.

---

**Adv Richard Bradstreet**

Member of the Companies Tribunal

7 March 2023