



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT01432ADJ2023**

In the matter between:

TRONCORP KZN (PTY) LTD

Applicant

and

TRONCORP KWAZULU NATAL (PTY) LTD

Respondent

Presiding member: Richard Bradstreet

Date of decision: 26 September 2023

DECISION (Reasons and Order)

INTRODUCTION

1. The Applicant is Troncorp KZN (Pty) Ltd, a private company duly incorporated in terms of the laws of South Africa, with registration number 2016/013287/07, and having its registered office at 21 Roycol Park, 70 Gladys Manzi Road, Mkondeni, Pietermaritzburg, Kwa-Zulu Natal, 3201.
2. The Respondent is Troncorp KwaZulu Natl (Pty) Ltd, a private company duly incorporated in terms of the laws of South Africa, with registration number

2023/657421/07, its registered address being 29 Mountain Ridge Road, New Germany, Kwa-Zulu Natal, 3610.

3. This application is brought in terms of section 11 of the Companies Act 71 of 2008 (Companies Act), and in terms of regulation 153 of the Companies Regulations, to be determined by default, the First Respondent not having filed a response.
4. In relation to the main application, the Applicant requests that the Tribunal order the Respondent to stop trading, and in the default application, the relief sought is the deregistration of the Respondent.
5. In the founding affidavit to the CTR142, the deponent (who is a director of the applicant) alleges that the Respondent has – inter alia – been targeting the Applicant’s customer’s, advising customers that there had been a name change, trading falsely under the Applicant’s physical address, and has taken control of various aspects of the business’ online presence.
6. The annexures provided give a clear indication of conflict between the persons involved in the respective companies, but also give rise to questions concerning the background to what seems to have become a tussle over the right to use the name Troncorp in Kwa-Zulu Natal. Email correspondence suggests that the business of the company had been sold to the Respondent, and it is not clear what the relationship between the companies is or was. It appears that there is also another business identified as “Tron Corp Germiston”, and it is not clear whether there is any relationship between this company and either the Applicant or the Respondent.

RELEVANT LAW

7. The Companies Tribunal, being a creature of statute, has limited power to resolve what may be a more complicated dispute than simply the use of a a

company name that is the same or confusingly similar to that of the Applicant. The Tribunal is able to come to the Applicant's assistance if it can be shown that the Respondent's name does not comply with the requirements of section 11 of the Companies Act.

8. 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"):

8.1. "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

8.2. "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)).

9. The Act requires that a company's name not be "the same as", nor "confusingly similar to" the name of another company (section 11(2)(a)), subject to certain exceptions, which do not appear to be relevant here.

10. The names "Troncorp KZN" and "Troncorp Kwa-Zulu Natal" are certainly confusingly similar, and arguably identical in substance. There is thus 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) at para 28)

11. The Respondent did not file a response to the claim set out in the main application, despite there appearing to have been service on one of the Respondent's directors. The Applicant therefore brought an application for a the matter to be decided by default.
12. In relation to applications for default orders, "[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 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)).
13. In relation to the default application brought by the Applicant in the present case, there does not appear to be evidence of service on the Respondent, as required by regulation 153(2)(b).

ORDER

14. It is accordingly ordered that:
 - a) The application is refused.
 - b) The Applicant be permitted to bring this this application again, seeking an order for the Respondent to change its name, and ensuring proper service of the application for a default order on the Respondents. The CIPC should also be joined as a second respondent.

Richard Bradstreet

Member of the Companies Tribunal

26 September 2023