



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT01621ADJ2023**

In the matter between:

RCL FOODS CONSUMER (PTY) LTD

Applicant

and

RAINBOW CHICKEN POULTRY (PTY) LTD

First Respondent

THE REGISTRAR OF COMPANIES

Second Respondent

Presiding member: Richard Bradstreet

Date of decision: 1 July 2024

DECISION (Reasons and Order)

1. The Applicant is RCL Foods Consumer (Pty) Ltd, a private company registered in accordance with the company laws of South Africa under registration number 1960/002377/07 and having its principal place of business at 10 The Boulevard, Westway Office Park, Westville, Kwa-Zulu Natal, 3629.
2. The First Respondent is Rainbow Chicken Poultry (Pty) Ltd, a private company registered in accordance with the company laws of South Africa under

registration number 2016/395182/07 and having its registered address at 439 Zuurbekom, Lenasia, Johannesburg, Gauteng, 1821.

3. The Second Respondent is the Registrar of Companies, being joined for the purposes of notice, and having its registered address at the DTI Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria.

RESTRICTIONS ON COMPANY NAMES

4. Section 11 of the Companies Act 71 of 2008 requires that a company's name must:

- 4.1. "not be the same as . . . 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 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" (section 11(2)(a)(i) and (iii));

- 4.2. "not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) [above] unless –

- (i) in the case of names referred to in paragraph (a) (i), each company bearing any such similar name is a member of the same group of companies; [or]

- (iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a) (iii), the company is the registered owner of the business name, trade mark, or mark, or is authorised by the registered owner to use it" (section 11(2)(b));

- 4.3. “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” (section 11(2)(c)).

EVALUATION OF FIRST RESPONDENT’S COMPLIANCE WITH SECTION 11

5. The words “Rainbow Chicken” in the First Respondent’s name were used by the listed entity RCL Foods Ltd (with which the Applicant is associated) when it was founded as Rainbow Chicken Limited in 1960. During 2015, the Applicant changed its name from Rainbow Farms (Pty) Ltd to RCL Foods Consumer (Pty) Ltd, and is now one of South Africa’s largest processors and marketers of chicken, operating within retail, wholesale and food service channels.
6. Despite the company’s name changes, the Applicant’s products are still marketed and sold under various “RAINBOW” brands, including “RAINBOW CHICKEN” and “RAINBOW SIMPLY CHICKEN”.
7. The Applicant is the proprietor of a number of trade marks which incorporate the word “RAINBOW” and the words “RAINBOW CHICKEN” in South Africa, including the word mark “RAINBOW”, which is registered under no 1985/09209 in class 29 (relating to, *inter alia*, poultry and poultry products).
8. The First Respondent’s name has, without question, “a marked resemblance or likeness” to the well-known trade marks belonging to the Applicant, and apprehending the First Respondent’s name would immediately bring these to mind (*Bata Ltd v Face Fashions CC 2001 (1) SA 844 (SCA)*).
9. The addition of the word “Poultry” could not possibly be said to distinguish the First Respondent from the goods of the Applicant, considering that the Applicant has registered “RAINBOW CHICKEN” for its exclusive use in relation to poultry in particular.

10. The mention of poultry would only add to the likelihood of confusion that is considered in relation to the question of passing off (*Cowbell AG v ICS Holdings* 2001 (3) SA 941 (SCA) para 10), which is relevant to the inquiry made when determining whether a confusing similarity exists for the purposes of section 11.
11. According to *Adidas AG & another v Pepkor Retail Limited* (187/12) [2013] ZASCA 3 (28 February 2013), the question to be asked in this regard is 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*” (para 28). The answer to this question in the present case is abundantly clear.
12. For the above reasons, the First Respondent’s name does not comply with the requirements of section 11, and particularly:
 - 12.1. The name contravenes section 11(2)(b) in that it is confusingly similar to the trade marks owned by the Applicant, and used by the First Respondent without the requisite permission; and
 - 12.2. The name contravenes section 11(2)(c) in that it is clearly such that would reasonably mislead a person to believe incorrectly that the First Respondent is part of, or associated with, the Applicant.

DEFAULT ORDER

13. 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)).

14. The Applicant has provided evidence of personal service on one of the directors of the First Respondent, and thus with regard to the application for a decision by default in terms of regulation 153(1), I am satisfied that there has been adequate service, and thus compliance with regulation 153(2)(b).

ORDER

15. It is accordingly ordered that:

- a) the First Respondent is ordered to change its name to one which does not incorporate any of the RAINBOW CHICKEN trade marks, is not confusingly similar to any such marks, and does not create an impression that the First Respondent is in any way associated with the Applicant;
- b) failing compliance with para (a) within sixty days from the date of this order, the Second Respondent is directed to change the name of the First Respondent to its registration number, followed by the mandatory suffix; and
- c) the Tribunal's Recording Officer (Registrar) is directed to serve this order on the First and Second Respondents.

Richard Bradstreet

Member of the Companies Tribunal

1 July 2024