



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

REPORTABLE

Case No. 2318/2021

In the matter between:-

FIRE LOGIC (PTY) LTD

Applicant

and

**LOGIC GROUP AFRICA (PTY) LTD
t/a FIRELOGIK**

Respondent

JUDGMENT

BANDS AJ:

- [1] This application concerns passing off proceedings between two companies, **FIRE LOGIC (PTY) LTD** and LOGIC GROUP AFRICA (PTY) LTD, trading under the name and style of **FIRELOGIK**. It is not in dispute that both parties operate within the Fixed Fire Protection Industry. Antithetical to the parties' respective

names, the legal principles and factual nuances involved in the adjudication of proceedings of this nature do not amount to a question of mere logic and require careful consideration.

[2] The order sought by the applicant is an order interdicting and restraining the respondent from passing off its services as that of the applicant or as being connected in the course of trade with the applicant, by using, in regard thereto, the same trade name or any other trade name which is confusingly or deceptively similar to the applicant's trade name. The relief is final in nature.

[3] Passing off is a species of unlawful competition, which arises in trade or business. It was defined by Rabie JA in *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others*¹ as follows:

"The wrong known as passing off consists in a representation by one person that his business (or merchandise, as the case may be) is that of another, or that it is associated with that of another, and, in order to determine whether a representation amounts to a passing-off, one enquires whether there is a reasonable likelihood that members of the public may be confused into believing that the business of the one is, or is connected with, that of another."

[4] As explained by Corbett CJ in *Williams t/a Jenifer Williams & Associates and Another v Life Line Southern Transvaal*:²

¹ 1977 (2) SA 916 (A) at 929C-E.

² 1996 (3) SA 408 (A) at 418F-H.

“In its classic form it usually consists in A representing, either expressly or impliedly (but almost invariably by the latter means), that the goods or services marketed by him emanate in the course of business from B or that there is an association between such goods or services and the business conducted by B. Such conduct is treated by the law as being wrongful because it results, or is calculated to result, in the improper filching of another’s trade and/or in an improper infringement of his goodwill and/or in causing injury to that other’s trade reputation. Such a representation may be made impliedly by A adopting a trade name or a get-up or mark for his goods which so resembles B’s name or get-up or mark as to lead the public to be confused or to be deceived into thinking that A’s goods or services emanate from B or that there is the association between them referred to above. Thus, in order to succeed in a passing-off action based upon an implied representation it is generally incumbent upon the plaintiff to establish, inter alia: firstly, that the name, get-up or mark used by him has become distinctive of his goods or services, in the sense that the public associate the name, get-up or mark with the goods or services marketed by him (this is often referred to as the acquisition of reputation); and, secondly, that the name, get-up or mark used by the defendant is such or is so used as to cause the public to be confused or deceived in the manner described above.”

[5] The applicant’s case, being one of an implied representation, calls for a consideration of the aforesaid factors. Prior thereto, I turn to the facts of the present matter.

[6] In short, the applicant contends as follows. The applicant was incorporated on 25 February 1994, since which time, it has been known as, and traded as, **FIRE LOGIC**, in the Eastern and Western Cape provinces. The applicant has been delivering the services of fire protection and maintenance in these regions for more than 27 years. It is said in the affidavit of the applicant’s director, Louise Scheffer (“Ms Scheffer”), that over the course of this period, *“the [a]pplicant has built up a substantial reputation in the*

business of fire protection and maintenance in the Eastern Cape and Western Cape and members of the public associate their trade name with such services.” The applicant’s average annual turnover, taking into account the past three years, was to the value of R30,000,000.00, with an average of R100,000.00 having been spent on marketing per year. The applicant is registered with the Automatic Sprinkler Inspection Bureau (“ASIB”) under the name *Firelogics*.

[7] Ms Scheffer contends that during mid-2016, some five years prior to the launch of the application, it came to the applicant’s attention³ that the respondent had, in February of the same year, applied for an ASIB licence in the Gqeberha region. It is common cause that the applicant, through its attorney of record, on 1 June 2016, sought an undertaking from the respondent, firstly, not to trade in the Eastern and Western Cape regions under the name **FIRELOGIK**; and secondly, requested that the respondent, whose registered company name at that time was FIRE LOGIK (PTY) LTD, attend to the change thereof.

[8] On 7 July 2016, the respondent, through its Chief Executive Officer, Stephen Ayerst (“Mr Ayerst”), responded, asserting that the respondent had never been granted, nor applied for an ASIB license to trade in the Eastern Cape region, nor did it intend, at that stage, of applying for such a license to trade in the Eastern or Western Cape regions. It was further recorded, on behalf of the respondent, that “[n]otwithstanding the above, we are in the process of *changing our name to Logik Group in order to avoid any confusion in the*

³ How this came to the applicant’s attention is not apparent from the papers.

eyes of the public between your client and our company.” I pause to mention that the letterhead of the respondent, on 7 July 2016, records the respondent’s email address as, info@firelogik.co.za, and bares the following emblem:



[9] Some seven and a half months later, on 29 March 2017, the applicant followed up with the respondent regarding its anticipated name change. On the same day, Mr Ayerst, via email, forwarded the respondent’s amended registration certificate to the applicant’s attorneys, from which it is apparent that the respondent’s registered name had been changed from FIRE LOGIK (PTY) LTD to LOGIK GROUP AFRICA (PTY) LTD, with effect from 10 August 2016. Apparent from the email, is that notwithstanding the company’s name change, Mr Ayerst’s email address and the respondent’s website address remained stephen@firelogik.co.za and www.firelogik.co.za respectively. Accordingly, the respondent continued to utilise the name **FIRELOGIK** for trading purposes.

[10] Thereafter, all was seemingly quiet for a period of two years until the applicant, on 30 April 2019, caused further correspondence to be directed to the respondent, contending, *inter alia*, that the respondent had failed to give

effect to its name change and that the applicant had erroneously received purchase orders from Pick 'n Pay, which were meant for the respondent.⁴

[11] The respondent, on the strength of its amended registration certificate, denied having failed to give effect to the company's name change and further contended that it had no dealings with Pick 'n Pay in the Eastern and Western Cape regions. Apparent, *ex facie* the respondent's letterhead on 13 May 2019, is that the respondent continued to: (i) trade under the name and style of **FIRELOGIK**; and (ii) utilise the email address, info@firelogik, notwithstanding the change to its registered name. The respondent's company is identified as follows on the letterhead under discussion:



[12] It is the applicant's case that in October 2020, it established that the respondent was trading in the Eastern Cape under the name **FIRELOGIK**. This again ignited an exchange of correspondence between the parties. The respondent's stance was that: (i) it had, at no time, represented that its business was that of the applicant; (ii) its letter head identifies the respondent as LOGIK GROUP AFRICA (PTY) LTD T/A **FIRELOGIK**; (iii) the respondent had been awarded a project with Makro in Gqeberha based on

⁴ Curiously, the purchase orders did not form part of the applicant's papers. One purchase order, dated 20 September 2017, was later disclosed to the court by the respondent as an annexure to the respondent's answering affidavit, having obtained a copy thereof by way of Rule 35(12).

an existing relationship between the respondent and the fire consultant employed by Makro; (iv) it had, with effect from 28 October 2020, registered a new juristic entity, Logik Group Africa East Cape (Pty) Ltd, which would operate exclusively in the Eastern and Western Cape regions, to the exclusion of the respondent; (v) until such time as this new entity had been registered with SARS, the respondent would **not** refrain from submitting tenders in its name in the Eastern and Western Cape, if invited to tender; and (vi) it would update its website by 20 November 2020 to identify Logik Group Africa (Pty) Ltd as the correct juristic entity.

[13] It is common cause that when the application was launched in August 2021,⁵ the respondent's website had not been updated in accordance with the respondent's undertaking, which it had made some 9 months prior. The website recorded the respondent's company details as follows:



[14] Thereafter, the respondent's use of the name **FIRELOGIK** continued unabated. A side-by-side comparison of the parties' respective websites, as they looked on 8 September 2022, is seen below:

⁵ Whilst this was originally denied by the respondent on the papers before court, a printout of the website, which had erroneously been omitted from the applicant's founding affidavit (mention of it being made at paragraph 30 thereof), was handed up by agreement between the parties at the hearing of the matter.

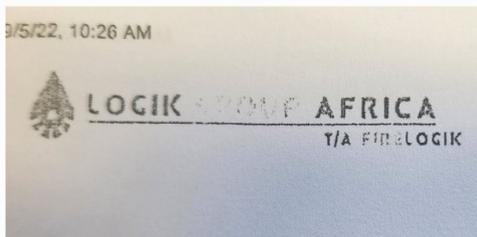
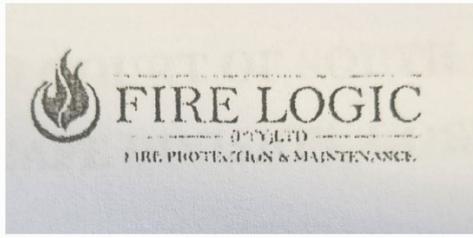


Image 1:

The applicant's website

www.firelogics.co.za

Image 2:

The respondent's website

www.firelogik.co.za

[15] This comparison, having been brought to the attention of the court in a further affidavit filed by the applicant, was met with a response from the respondent stating that its website, as depicted above, was no longer active as of 29 September 2022.

[16] In the main, the respondent resists the relief sought by the applicant on the grounds that: (i) the applicant has failed to establish a reputation; and (ii) that the applicant has failed to prove that the respondent trades upon and benefits from the reputation of the applicant; that the respondent's business infringes upon the goodwill of the applicant; or that the applicant has suffered

damages. Ancillary to the above, the respondent contends that the relief sought by the applicant has been rendered moot given the respondent's name change in August 2016 and its assertion that the respondent does not trade in the Eastern and Western Cape. I disagree.

[17] I now turn to the essential issues.

Reputation

[18] Having regard to the principles distilled in *Williams t/a Jenifer Williams & Associates and Another v Life Line Southern Transvaal* (supra) and *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others* (supra), the first issue which I am called upon to determine is whether the applicant has established that its trading name has become distinctive of its services, in the sense that the public associate the applicant's trade name with the services marketed by the applicant.

[19] In considering the first leg of the inquiry, a distinction needs to be drawn between cases in which descriptive words, as opposed to invented or fancy words (often referred to as a fancy name), are used in a trade name. This is an aspect which appears to have escaped the minds of the parties. The importance of such distinction was dealt with by Zietsman JP in *Van der Watt v Humansdorp Marketing CC*.⁶

"Where the applicant has used an invented or fancy name for his business it will more easily be found that the respondent, if he uses the same or a similar name for

⁶ 1993 (4) SA 799 (SEC) 782-783.

his own business, is falsely representing his business as being that of, or being associated with, the business of the applicant. However, when an applicant uses his own name or mere descriptive words in naming his business, an interdict will not easily be granted unless the applicant can show that his name, or the descriptive words used by him, have become so associated with his business or his products that they have acquired a secondary meaning and are associated in the minds of the public with the applicants product or business, and that of no one else.”

[20] Given that the primary function of descriptive words is to describe and not distinguish, the courts will not easily find that descriptive words have become distinctive of the business, or the products of the person using them and will not give what amounts to a monopoly in such words to one trader at the expense of another. Conversely, fancy names are designed specifically to distinguish services or products of one competitor from those of another. Accordingly, they are in themselves distinctive.⁷

[21] As previously stated, both parties operate within the Fixed Fire Protection Industry. The first portion of the applicant's name, “fire”, is unquestionably descriptive of the industry in which the applicant operates. It is an ordinary English word and cannot be said to have been constructed. Accordingly, the word ‘fire’ is not in itself distinctive. However, the applicant's trading name is made up of two words, ‘fire’ and ‘logic’. Whilst I accept that the word ‘logic’ is an ordinary English word, which denotes the ability to reason correctly; alternatively, the course of action as a necessary consequence of something else; when the words are utilised together, the name **FIRE LOGIC** has no

⁷ *Sea Harvest Corporation (Pty) Ltd v Irvin & Johnson Ltd* 1985 (2) 335 (CPD) at 360B-C.
Truck and Car Co Ltd v Kar-N-Truck Auctions 1954 (4) SA 552 (A) at 557.

ordinary meaning in any official language other than to serve to distinguish the services of the applicant from those of its competitors. This is distinguishable from the position in *Sea Harvest Corporation (Pty) Ltd v Irvin & Johnson Ltd*,⁸ in which the court was called upon to consider the words “prime cut” in relation to the description of frozen fish. The court found that the words, when taken together, were a convenient and natural way of describing a selected piece of fish with superior quality, and which phrase is widely utilised elsewhere in the marketing of superior cuts of fish. The same cannot be said of the words under consideration in the present matter. I am satisfied that the name **FIRE LOGIC** is a fancy name.

[22] Should I be incorrect in this regard, I am in any event satisfied that the applicant has established that the public associates its trade name with the applicant’s services in the Eastern and Western Cape regions. Whilst it is so that a claimant must establish that it has a reputation among a substantial number of persons who are either clients or potential clients of its business;⁹ what constitutes a ‘substantial number’ is dependent upon the circumstances of each case, and is in my view, inextricably linked to the industry in which a claimant operates or the market in which the products are advertised. For example, the number of persons required to reach the required threshold, in the case of a specialised market or industry, such as in the present instance, could be relatively small; whereas it would need to be significantly higher in the case of a product, which is targeted at the mass market.¹⁰

⁸ *Supra* at 360G-J.

⁹ *Caterham Car Sales & Coach Works Ltd v Birkin Cars (Pty) Ltd* 1998 (3) SA 938 (SCA).

¹⁰ Dean, O. and Dyer, A. *Dean & Dyer Introduction to Intellectual Property Law*. Oxford University Press, First Impression, 2014, at page 167.

[23] The respondent's allegations, regarding the applicant's alleged failure to establish a reputation, in the face of the applicant's positive assertions, amounts to no more than a bare denial and are insufficient to raise a genuine dispute of fact. The respondent, in addition to raising what it contends the applicant ought to have alleged in its founding papers to establish a reputation,¹¹ goes no further than to state:

"AD PARAGRAPH 6:

90. *Save to admit that the Applicant was incorporated in 1994 and converted from Fire Logic CC to Fire Logic (Pty) Ltd, the remainder of the contents of this paragraph are denied and the Applicant is put to the proof thereof.*

AD PARAGRAPHS 7 TO 9:

91. *The contents of these paragraphs are denied as if each and every allegation contained therein has been specifically traversed and the Applicant is put to the proof thereof.*

92. *Without derogating from the generality of the aforesaid denial the Respondent submits the following:*

92.1. *The Applicant has not established that it has a reputation;*

92.2. *The Applicant's alleged annual turnover is not an indication of its reputation;*

93.3. *The Applicant's alleged registration with the ASIB under the name Firelogics does not establish a reputation."*

¹¹ At paragraphs 48.1 to 48.6 of the respondent's answering affidavit.

[24] As articulated by Binns-Ward J in *Absa Bank Ltd v Erf 1252 Marine Drive (Pty) Ltd and Another*:¹² “the import of the Plascon-Evans rule is so well established that it hardly bears stating: it is to the effect that where there is a dispute of fact on the papers final relief may be granted in an application only if it is justified by the averments in the affidavits of the applicant which are either admitted or not disputed by the respondent, together with the facts alleged by the respondent. It is, however, the qualifications and exceptions to that simple principle that are sometimes overlooked...” [Own emphasis].

[25] As pointed out by the learned judge of appeal in *Plascon-Evans Paints v Van Riebeeck Paints*:¹³

“In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact (see in this regard *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163 - 5; *Da Mata v Otto* NO 1972 (3) SA 858 (A) at 882D - H). If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court (cf *Petersen v Cuthbert & Co Ltd* 1945 AD 420 at 428; *Room Hire* case supra at 1164) and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks (see eg *Rikhoto v East Rand Administration Board and Another* 1983 (4) SA 278 (W) at 283E - H). Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers (see the remarks of Botha AJA in the *Associated South African Bakeries* case, supra at 924A).”

¹² (23255/2010) [2012] ZAWCHC 43 (15 May 2012).

¹³ 1984 (3) 623 (AD) at 634I – 635A-C

[26] Had the respondent intended on raising a genuine dispute of fact in respect of the applicant's reputation, the respondent was required to seriously and unambiguously address the facts that it wished to place in dispute. This is particularly so in circumstances where "*the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate.*"¹⁴ This is one such case.

[27] In such circumstances, if the disputing party, instead of addressing the facts, rests his case on a bare or ambiguous denial, the court will generally have difficulty in finding that the test is satisfied. The reliance by the respondent on the correspondence received from Polygon Project Engineers and WBHO, to cast aspersions on the applicant's reputation, does not assist the respondent and at best amounts to unsubstantiated hearsay.

[28] I am accordingly satisfied that the applicant has established that the public associates its trade name with its services in the Eastern and Western Cape regions.

[29] Having come to the above conclusion, I now turn to consider the second requirement alluded to by Corbett CJ in *Williams t/a Jenifer Williams & Associates and Another v Life Line Southern Transvaal* (supra).

Confusion

¹⁴ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at paragraph 13.

[30] In order to satisfy this requirement, the applicant must establish that the name utilised by the respondent, **FIRELOGIK**, is such, or is so used, as to cause the public to be confused or to be deceived into thinking that the respondent's services emanate from the applicant or that there is an association between the applicant and the respondent. Whether there is a reasonable likelihood of such confusion arising, depends on the facts of each case.¹⁵

[31] Significantly, nowhere in the respondent's papers does it address the issue of whether its name **FIRELOGIK** is deceptively similar, so as to cause confusion, with that of **FIRE LOGIC**. Instead, it goes to great lengths in an attempt to prove a failure on the part of the applicant to establish actual deception or confusion, which gives the distinct impression of an attempt to do damage control. The famous words of Queen Gertrude in Shakespeare's Hamlet, thou "*doth protest too much*", come to mind.

[32] The likelihood of deception or confusion is determined objectively, by reference to the ordinary or average customer of the class of persons who are likely to procure the services in question.¹⁶ It is not necessary for a plaintiff or an applicant to prove that anyone has subjectively been misled or that confusion has actually arisen. Whilst lack of evidence of actual

¹⁵ *Quad Africa Energy (Pty) Ltd v The Sugarless Company (Pty) Ltd and Another* (Case no 1176/2018) [2020] ZASCA 37 (9 April 2020) at paragraph 37.

¹⁶ *Blue Lion Manufacturing (Pty) Ltd v National Brands Ltd* 2001 (3) SCA SA 884 (SCA).
Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd 1993 (2) SA 307 (A).
Adidas AG & Another v Pepkor Retail Limited (187/12) [2013] ZASCA 3 (28 February 2013).

confusion or deception is a factor which needs to be considered,¹⁷ it is not in itself decisive. The determination of a likelihood of deception is a value judgment, which is a function of the court.¹⁸

[33] As previously stated, the parties have a common field of activity. This is not in dispute. Implicit therein is that the parties are competitors, despite the protestations of the respondent that it has not operated, nor does it presently operate, in the Eastern and Western Cape regions. I return to this aspect later in this judgment, suffice at this juncture to state that such contention is a fallacy, on the respondent's own version.

[34] The fire protection industry is, by its very nature, aimed at the provision of fire protection measures that are intended to prevent the development and spread of fires. Such services are utilised in respect of new building works; the maintenance and servicing of existing works; and the certification of existing works for various purposes, such as insurance. Regard being had to the respective trade names, set out above, I am of the considered view that deception or confusion may easily arise in respect of new or potential clients. I say this for the following reasons.

¹⁷ And which may in certain circumstances militate against a finding of the likelihood of deception or confusion.

¹⁸ *Royal Beech-nut (Pty) Ltd t/a Manhattan Confectioners v United Tobacco Co Ltd t/a Willards Foods* 1992 (4) SA 118 (A).

Plascon-Evans Paints Ltd (supra).

Tri-ang Pedigree (SA) (Pty) Ltd v Prima Toys (Pty) Ltd 1985 (1) 448 (A).

[35] Not only are the names **FIRE LOGIC** and **FIRELOGIK** deceptively similar, to the eye, but the pronunciation thereof is identical. Accordingly, not only are the two names deceptively similar to the sight, but they are deceptively similar by sound. It cannot be gainsaid that in any industry, word of mouth marketing is a powerful tool. A consumer in the industry in which the parties operate, having heard from, or having been advised by, another person in the trade to utilise the services of **FIRE LOGIC**, could very easily approach the respondent, trading as **FIRELOGIK**, and assume it to be the applicant's company, which had been recommended. This is more so in the modern era given the advances in technology. Up until the deactivation of the respondent's website, which only occurred shortly prior to the hearing of the matter, and with particular reference to the parties respective domain names; company names as displayed on their respective websites; and email addresses, not only did the potential for confusion arise when the consumer searched for the applicant's website, but such confusion would remain if he or she had reached the respondent's website, instead of the applicant's website, in error.

[36] This too applies to a consumer, having seen an advertisement emanating from the applicant. The words in the mind of the consumer are "fire" and "logic". I must accept that a consumer, having seen an advertisement for the applicant's services, with imperfect recollection, may not recall that the applicant's trading name is spelt with a "C" and not with a "K".

[37] How easily such confusion can occur was illustrated on the respondent's own version, where an email requesting a costing from Bantry Construction, which was meant for the respondent, was sent to the applicant in the circumstances set out in the respondent's answering affidavit to the applicant's supplementary affidavit:

"33. It has been confirmed by the Respondent's management team that Chris Snyders ("Snyders" alternatively "Chris"), an employee of the Respondent, received a telephone call on his cellular telephone, from an individual at Bantry Construction, presumably David Cronje, notifying him that they would need a quotation for the JMP project.

34. Snyders indicated that Cronje could send him an email whereafter he would then reply thereto. Snyders requested from Cronje whether he has his email address to which Snyders responded that he did. Cronje advised that he would issue the request for a quotation....

35. Cronje confirmed that he was aware that the Respondent was the initial installer for the JMP Project, as advised by the Project Owner, who had provided him with Snyders' telephone number.

36. As he did not have further contact information of the Respondent initially, he confirmed that following a Google search of the name "Firelogic", the Applicant's website popped up. Cronje then opened up the Applicant's website and found the email address info@firelogics.co.za on the website.

37. ...

38. On the 4th August 2022 Cronje then used the email address he had sourced to send his email to the Applicant.

39. Cronje further commented that when he did not receive a reply, and needing an urgent response, he contacted the employer who provide (sic) him with the email address of the Respondent."

[38] Whilst the aforesaid confusion was later resolved as the respondent was known to the employer, this is exactly the type of confusion to which I have referred above. The respondent's contention as to the unlikelihood of *lasting* confusion amongst *known clients*, takes the matter no further. The question is not whether a person who has intimate knowledge of either of the parties will be confused or deceived, it is whether a person who does **not** have such knowledge is likely to be confused or deceived.¹⁹

[39] I am satisfied that the applicant has met the second requirement set out in *Williams t/a Jenifer Williams & Associates and Another v Life Line Southern Transvaal* (supra).

[40] Where the above two requirements have been met, a party may, depending on the circumstances, apply for an interdict or claim damages with the Aquilian action.²⁰ As previously stated, the applicant seeks relief by way of an interdict. Given that an applicant need not prove actual deception or confusion, but only that there is a reasonable likelihood of same, it is not a requirement for an applicant to prove actual prejudice; that loss is likely to result, suffices. Where there is a likelihood of deception or confusion, a likelihood of damage follows.²¹ Fault, in the form of intent or negligence, is not a requirement for an interdict,²² and accordingly passing off, which is innocent in nature, will found an interdict. Where a wrongdoer has given an

¹⁹ *Tri-ang Pedigree (SA) (Pty) Ltd v Prima Toys (Pty) Ltd* (supra).

²⁰ Van Heerden-Neethling, *Unlawful Competition*, 2nd Edition. LexisNexis, 2008. P 189 at paragraphs 2.5 and 2.5.1.

²¹ *Pioneer Foods (Pty) Ltd v Bothaville Milling (Pty) Ltd* [2014] 2 All SA 282 (SCA).

²² See: *Setlogelo v Setlogelo* 1914 AD 221 for the requirements of a final interdict.

undertaking not to continue with his or her unlawful conduct, an interdict is nevertheless still competent where the conduct complained of was intentional.²³ That the respondent's conduct was intentional, is the only rational finding to which I can arrive.

[41] The respondent, on the papers before court, denies any wrongdoing on its part. It proffers no explanation as to how it arrived at its trade name, nor does it address the similarity thereof to that of the applicant's. It is however telling that the respondent, in response to ongoing threats of legal proceedings, has, over a period spanning some six years since its registration, attended to a company name change; has, through its CEO, seen to the incorporation of separate legal entities to trade in various geographical regions; and has more recently, shortly prior to the argument of the matter, disabled its website and amended its domain name and email address, all the while continuing to trade under the name **FIRELOGIK**. Whilst the respondent contends that it has built its own name and reputation over the years, why it sought to build a reputation, on a name so deceptively similar to that of the applicant, it does not attempt to answer.

[42] It bears mention that whilst the respondent initially denied trading in the Eastern and Western Cape regions, relying on its alleged absence of an ASIB license permitting it to do so, the respondent, on its own version, tendered for and was subsequently awarded a contract by Makro (in the Eastern Cape), for the installation of sprinklers. It is significant that this disclosure was only forthcoming once the respondent had been shown to

²³ *Peter Jackson (Overseas) Ltd v Rand Tobacco Co. (1936) Ltd* 1938 TPD 450.

have been untruthful in its earlier contention. The fact that the respondent was invited to tender for the said project, upon which fact the respondent seeks to hide behind, is of no consequence. The respondent subsequently made it clear that until such time as its “sister company” Logik Group Africa Eastern Cape (Pty) Ltd had been registered with SARS, the respondent would **not** refrain from submitting tenders in its name in the Eastern and Western Cape, if requested to. This conduct casts serious doubt upon the *bona fides* of the respondent. The respondent’s further submission that its “sister company”, would operate exclusively in the Eastern and Western Cape regions,²⁴ to the exclusion of the respondent, which company it categorically contends does not trade as **FIRELOGIK**, is also cast into doubt. *Ex facie* the covering letter submitted together with its bid documentation to Aspen Pharma (in the Eastern Cape), it is clear that the respondent’s “sister company” utilised the name **FIRELOGIK**, albeit having been spelt as “**FIRE LOGIK**”.

[43] Accordingly, the respondent’s contention that it no longer trades under the name of **FIRELOGIK** in the Eastern and Western Cape regions, together with the fact that it has since amended its website; domain name and email addresses, is at best for the respondent an undertaking not to continue with its unlawful conduct, the *bona fides* of which is doubtful, given the respondent’s prior conduct to which I have referred.

[44] I am accordingly satisfied that in the present circumstances, the applicant is entitled to interdictory relief against the respondent, in the locations in which

²⁴ Once registered with SARS.

it has proved to have a reputation. Neither Logik Group Africa Eastern Cape (Pty) Ltd nor Logik Group Africa Western Cape (Pty) Ltd are party to these proceedings and accordingly the relief belatedly sought against these entities, in the applicant's heads of argument, is incompetent.

[45] The applicant also applied for the striking out of limited matter in the respondent's answering affidavit on the basis that certain paragraphs contained allegations which were irrelevant and/or scandalous. In part, the paragraphs identified by the applicant dealt with the correspondence and allegations emanating from Polygon Project Engineers and WBHO, which I have already stated constitutes, at best, unsubstantiated hearsay, and to which no weight is attached. The remainder of the paragraphs referred to by the applicant pertain to the allegations which relate to the operation of the Fire Protection Industry, which I do not consider to be irrelevant given the nature of these proceedings. I do not deem it necessary to determine the application, which will in no way change the result of the main proceedings and will only serve to unduly burden this judgment. The respondent's allegations were in any event expressly dealt with by the applicant in the replying affidavit filed of record. Given the partial success, which each party enjoyed in the striking out proceedings, which was evenly balanced, I am of the view that each party ought to pay their own costs in respect of such application.

[46] In the result, the following order is issued:

1. The respondent is interdicted and restrained from passing off its services as that of the applicant or being connected in the course of trade with the applicant, by using, in regard thereto, the name **"FIRELOGIK"** in the Eastern Cape and Western Cape provinces.
2. The respondent is ordered to pay the costs of the passing off proceedings.
3. Each party is to pay their own costs in the applicant's application to strike out.

I BANDS

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant: Ms Zietsman
Instructed by: Greyvensteins Attorneys
104 Park Drive, Central, Gqeberha

For the respondent: Mr Glendinning
Instructed by: E Taylor Attorneys
22 Soutpansberg Street, Noordeuwel, Krugersdorp

c/o Lawrence Masiza Vorster Inc.
214 Cape Road, Mill Park, Gqeberha

Coram: Bands AJ
Date heard: 1 December 2022
Delivered: 17 March 2023