



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not reportable

Case no: 882/2023

In the matter between:

**LOGIK GROUP AFRICA (PTY) LTD
t/a FIRE LOGIK**

APPELLANT

and

FIRE LOGIC (PTY) LTD

RESPONDENT

Neutral citation: *Logik Group Africa (Pty) Ltd t/a Fire Logik v Fire Logic (Pty) Ltd* (882/2023) [2025] ZASCA 164 (28 October 2025)

Coram: ZONDI DP and MOLEFE JA and MOLOPA-SETHOSA, KOEN and BLOEM AJJA

Heard: 18 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 11:00 am on **28 October 2025**.

Summary: Delict– Passing-off proceedings onus of proving reputation for passing-off application discharged – whether the respondent established the requirements of passing-off and was thus entitled to interdictory relief against the appellant.

ORDER

On appeal from: Eastern Cape Division of the High Court, Gqeberha (Bands AJ, sitting as court of first instance):

The appeal is dismissed with costs.

JUDGMENT

Molopa-Sethosa AJA (Zondi DP and Molefe JA and Koen and Bloem AJJA concurring):

[1] This is an appeal against the judgment and order of the Eastern Cape Division of the High Court, Gqeberha (the high court). The appellant, Logik Group Africa (Pty) Ltd t/a Fire Logik (Logik Group), was interdicted and restrained from passing off its services as that of the respondent, Fire Logic (Pty) Ltd (Fire Logic), or as being connected in the course of trade with Fire Logic, by using the name ‘Fire Logik’ in the Eastern Cape and Western Cape provinces. The appeal is with the leave of this Court.

[2] The issues in this appeal are: firstly, whether Fire Logic discharged the onus of establishing its reputation. Secondly, whether the high court correctly found that it had proved the requirements of passing-off and was thus entitled to interdictory relief against Logik Group.

[3] Fire Logic was incorporated on 25 February 1994. Since 1994 it has been known as, and traded as, Fire Logic in the provinces of the Eastern Cape and Western Cape. It has been delivering the services of fire protection and maintenance in these provinces for over 27 years. Fire Logic alleged that over the past 27 years it has built up a substantial reputation in the business of providing fire protection and maintenance services, especially in the Eastern Cape and Western Cape provinces. Members of the public associate their trade name with such services.

[4] In her founding affidavit, Fire Logic's director, Ms Louise Scheffer (Ms Scheffer), alleged that Fire Logic's average annual turnover over three years prior to July 2021, was R30 million; an average amount of R100 000 was spent on marketing per year; and that Fire Logic was registered with the Automatic Sprinkler Inspection Bureau (the ASIB) under the name 'Fire Logics'. These allegations have not been gainsaid.

[5] Logik Group, which was registered in 2015, began operating under the name 'Fire Logik'. Fire Logic contended that allowing Logik Group to continue operating under the name 'Fire Logik' would lead to confusion, due to the similarity of their names, especially given that both companies operated in the same industry.

[6] In 2016, it came to Fire Logic's attention that Logik Group had applied for an ASIB license in the Port Elizabeth region, using the name 'Fire Logik'. On 1 June 2016, Fire Logic's attorneys wrote a letter to Logik Group. It raised concerns that the names of the two entities were pronounced the same and spelt almost the same, and that such similarities would cause members of the public to be confused into believing that Logik Group's business was that of Fire Logic; and that its conduct amounted to passing-off.

[7] Fire Logic sought an undertaking from Logik Group that it would not trade in the Eastern and Western Cape provinces under the name Fire Logik; and that Logik Group should change the name of its company. In a letter dated 7 July 2016, the Chief Director of Logik Group, Mr Stephen Duncan Ayerst, denied that Logik Group had applied to the ASIB to trade in the Eastern or Western Cape. He, however, stated its intention to change its name from Fire Logik to Logik Group, in his own words, was *‘in order to avoid any confusion in the eyes of the public between your client and our company’*. (Emphasis added.)

[8] On 10 August 2016, Logik Group changed its name from Fire Logik (Pty) Ltd to Logik Group Africa (Pty) Ltd. However, despite this name change, Logik Group continued trading as Fire Logik.

[9] In a letter dated 9 November 2020, Logik Group, through its consultants, Glenro Commercial & Construction Consultants (Pty) Ltd, advised, inter alia: that a company named Logik Group Africa East Cape (Pty) Ltd was registered with the Company Intellectual Property Commission on 28 October 2020; this new entity was in the process of being registered with the South African Revenue Service; and it would update its website¹ by 20 November 2020, in order to identify Logik Group Africa (Pty) Ltd as the actual juristic entity. However, until such time as Logik Group Africa East Cape (Pty) Ltd is registered with the South African Revenue Service, it would not refrain from submitting a tender in its name, i.e. Logik Group Africa *t/a Fire Logik*.

¹ Which referred to Logik Group Africa, trading as Fire Logik.

[10] It is common cause that in August 2021, when Fire Logic launched its application to interdict and restrain Logik Group from passing-off its services as that of Fire Logic, Logik Group's website had not been updated in accordance with its undertaking made some nine months earlier in its letter of 9 November 2020. The website still recorded Logik Group's company details as 'Logik Group Africa t/a Fire Logik'.

[11] Furthermore, on 8 September 2022, almost a year later, when Fire Logic's supplementary affidavit was deposed to, Logik Group still traded as Fire Logik, and its website still reflected the name 'LOGIK GROUP AFRICA T/A FIRE LOGIK'. Logik Group acknowledged that its website had remained open and active, but alleged that as at the date of its answering affidavit, 29 September 2022, 'the website . . . was no longer active and had been shut down'. Thus, Logik Group, despite having changed its name from Fire Logic (Pty) Ltd to Logik Group Africa (Pty) Ltd on 10 August 2016, simply continued to trade as Fire Logik for the following six years. Its email address was reflected as info@firelogik.co.za; whilst its website remained www.firelogik.co.za. The word 'firelogik' is no doubt deceptively similar to Fire Logic's name, and is bound to confuse the public.

[12] The significant market confusion between the two companies reached a peak in 2019. That was when Fire Logic started receiving purchase orders meant for Logik Group from a retail chain store.

[13] In 2021, Fire Logic launched its application in the high court, seeking a final interdict to prevent Logik Group Africa from using the name 'Fire Logik'. It argued that the similarity in names caused confusion among customers; infringed on its established goodwill; and constituted passing-off. Logik Group denied that there was

significant likelihood of confusion. It alleged that it had tried to change its name in 2016. It also denied that Fire Logic had built a reputation under its name. It contended that in fact Fire Logik, had ‘a poor reputation in the industry’.

[14] Logik Group, on its own version, illustrated just how easily confusion occurred between it and Fire Logic during August 2022. Logik Group referred to an email requesting a costing from Bantry Construction, for a project which was meant for Logik Group, but was sent to Fire Logic. Mr David Cronje (Mr Cronje) from Bantry Construction, did not have the contact information of Logik Group and performed a Google search of the name ‘Firelogic’. Fire Logic’s website popped up and he found the email address for Fire Logic. He then used the email address but did not receive a reply. Mr Cronje needed an urgent response and therefore contacted the employer who provided him with the email address for Fire Logic.

[15] Logic Group denied any wrongdoing on its part. It did not proffer any explanation as to how it arrived at its trade name, nor did it address the similarity thereof to that of Fire Logic’s.

[16] The high court found that: Fire Logic had established a reputation in its name; the similarity in the names could indeed cause confusion; there was sufficient evidence of customer confusion; and Fire Logic’s brand was deserving of legal protection. As a result, it found for Fire Logic and interdicted the use by Logik Group of the name ‘Fire Logik’ in the Eastern Cape and Western Cape provinces. The question is whether the high court’s finding was correct.

[17] Passing-off is a branch of our common law that protects the goodwill of a business from misrepresentation by others. The claimant must show that it has a

reputation or goodwill in its product or brand; further, that the other party's actions constitute a misrepresentation, causing, or likely to cause confusion or deception among consumers. Furthermore, the claimant must demonstrate that it has suffered, or is likely to suffer damage to its reputation or goodwill as a result of the misrepresentation. As Wallis JA succinctly put it in *Pioneer Foods (Pty) Limited v Bothaville Milling (Pty) Limited*:²

‘. . . [P]roof of passing off requires proof of reputation, misrepresentation and damage.’³ (Emphasis added.)

[18] In *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others (Capital Estate)*,⁴ Rabie JA defined passing off 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.* . . . Whether there is a reasonable likelihood of such confusion arising is, of course, a question of fact which will have to be determined in the light of the circumstances of each case.’⁵ (Emphasis added.)

[19] In *Brian Boswell Circus (Pty) Ltd and Another v Boswell-Wilkie Circus (Pty) Ltd*,⁶ this Court held that passing-off is a form of wrongful competition and that:

² *Pioneer Foods (Pty) Limited v Bothaville Milling (Pty) Limited* [2014] ZASCA 6; [2014] 2 All SA 282 (SCA); 2014 BIP 486 (SCA)

³ Ibid para 7. See also *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938; [1998] 3 All SA 175 (A) (SCA) paras 13; 15; and 16. The requirements for passing off are based on the principles outlined in the English case of *Reckitt & Colman Products Ltd v Borden Inc and Others* [1990] 2 WUKHL 123, [1990] 1 W.L.R. 491; [1990] 1 All E.R. 873 (known as *The Jif Lemon case*). These may be explained as follows:

(a) Reputation: The business must demonstrate that it enjoys a reputation in the relevant market.

(b) Misrepresentation: There must be a misrepresentation that deceives or is likely to deceive the public.

(c) Damage: The misrepresentation must cause or likely to cause harm to the plaintiff's reputation or business interests.

⁴ *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others* 1977 (2) SA 916 (A); referred to by this Court in *Koni Multinational Brands (Pty) Ltd v Beiersdorf AG* [2021] ZASCA 24; 2021 BIP 15 (SCA); [2021] HIPR 162 (SCA); 2021 JDR 0414 (SCA) para 19.

⁵ Ibid *Capital Estate* at 929C-E. Citations omitted.

⁶ *Brian Boswell Circus (Pty) Ltd and Another v Boswell-Wilkie Circus (Pty) Ltd* 1985 (4) SA 466 (A); [1985] 2 All SA 512 (A).

‘. . . [i] t is unlawful because it results, or at any rate is calculated to result, in the improper filching of another’s trade and an improper infringement of his goodwill and/or because it may cause injury to that other’s trade reputation (*Capital Estate* case supra at 930H-931C). In a passing off action factors of importance are: (1) whether the defendant is engaged in the same field of business activity as the plaintiff, and (2) whether the plaintiff’s trade or business name has acquired a reputation, i.e. has become distinctive of, or in the minds of the public is associated with, the business carried on by the plaintiff. . .’⁷

[20] In the present matter, in order to succeed in the passing-off claim, Fire Logic had to allege and prove a reputation. Fire Logic’s allegation of reputation was denied by Logik Group. However, Logik Group did not dispute that Fire Logic had been trading for 27 years under the name ‘Fire Logic’. The allegations regarding Logik Group’s annual turnover of R30 million and marketing expenses of R100 000 per year, also could not be disputed.

[21] In *GPS Restaurante BK v Cantina Tequila (Mexican Connection CC) and Others*,⁸ the court held that:

‘An important factor to keep in mind is that goodwill in the sense of an established reputation can sometimes be inferred from the evidence of sales or of advertising involving the feature in question.’⁹

[22] Adopting a robust and common sense approach,¹⁰ it is clear that the high court correctly found that Fire Logic established a reputation under the name ‘Fire Logic’; and the public associates its trade name with Fire Logic’s services in the Eastern Cape and Western Cape provinces. Considering Logik Group’s conduct, it is clear that it was not operating honestly under its own name. This is because Fire Logic

⁷ Ibid paras 9 and 10.

⁸ *GPS Restaurante BK v Cantina Tequila (Mexican Connection CC) and others* [1997] 1 All SA 603 (T).

⁹ Ibid at 609.

¹⁰ *John Craig (Pty) Ltd v Dupa Clothing Industries (Pty) Ltd* 1977 (3) SA 144 (T) at 155H.

was registered in 1994, and Logik Group was registered with the same name 21 years later, in 2015.

[23] Further, Logik Group, after having been requested by Fire Logic to change its name, carried on trading under the same name as Fire Logic. It did so despite undertaking not to do so and acknowledging that it wanted to avoid any confusion in the eyes of the public between itself and Fire Logic.

[24] As was held in *Capital Estate*:

‘In the present case the respondents have established a likelihood of confusion. If they are not given the protection they seek, they will, in the above-quoted words of VAN DEN HEEVER, J.A., be exposed to “nadele wat kan spruit uit enige onwil” which the appellants (or others who use the name “Holiday Inn” on the appellants’ authority) may incur with members of the public, and, having regard to the appellants’ conduct as disclosed in the papers, I consider that the respondents should not – in the words of GREENBERG, J.A., in the *Truck and Car* case, *supra* – be required to leave their reputation at the mercy of parties who *ex hypothesi* have wrongly conducted themselves so as to cause confusion.’¹¹

[25] The undisputed evidence shows that Fire Logic has been providing fire protection and maintenance services for more than 27 years; it has built up a substantial reputation in the Eastern and Western Cape provinces; and members of the public associate its trade name with such services. This is supported by an average annual turnover of R30 million and an average annual marketing spend of R100 000. All these facts clearly establish its reputation within the industry in question. There is no doubt that Logik Group’s trade name caused confusion to the public. In fact, Logik Group conceded in its own letters that there is a likelihood of

¹¹ *Capital Estate* at 932C-D.

customer confusion. The evidence clearly establishes both reputation and public confusion.

[26] In the light of the above, the submission by Logik Group, that Fire Logic failed to establish reputation, must thus fail. The high court cannot be faulted for concluding that Logik Group's allegations regarding Fire Logic's failure to establish reputation, in the face of Fire Logic's positive assertions, amounted to no more than an impermissible bare denial, and insufficient to raise a genuine dispute of fact. This is particularly so where the disputing party (Logik Group) must necessarily possess knowledge of the factual matrix so as to be able to provide an answer, or countervailing evidence. There is no real dispute of fact. The high court was accordingly entitled to decide the matter on the papers.

[27] In the result, the following order is made:
The appeal is dismissed with costs.

L M MOLOPA-SETHOSA
ACTING JUDGE OF APPEAL

Appearances

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