



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 53311/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: Yes

25 January 2022

DATE

SIGNATURE

In the matter between:

SOUTH AFRICAN DANCE FOUNDATION

Reg no.1998/01900-08

And

THABO PHIRI

DANCESPORT SOUTH AFRICA

SOUTH AFRICAN SPORT CONFEDERATION

AND OLYMPIC COMMITTEES

COMMISSION OF COMPANIES AND

INTELLECTUAL PROPERTY COMMISSION

APPLICANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10H00 on 25th January 2022

JUDGMENT

MATSHITSE AJ

INTRODUCTION

[1]. The applicant is seeking orders in the following terms:

[1.1] that the first and second respondents shall refrain from using any of the following names:

- [1.1.1] FEDANSA- The Federation of Dance Sport South Africa;
- [1.1.2] DanceSport South Africa;
- [1.1.3] South African Dance; and
- [1.1.4] Dans Sport Council.

[1.2] that the first and second respondents shall refrain from presenting themselves as the custodians of dance in South Africa under the names as mentioned above at paragraph 1.1

[1.3] that the first and second respondents shall refrain from organising any dance competitions or championships Provincial or at National level with regard to the genres Ballroom, Latin, Freestyle, Disco, Hip Hop, Wheelchair, Disabled, Traditional and Social Dance style under any of the names mentioned above at paragraph 1.1; and

[1.4] that the first and second respondents shall refrain from addressing the dance community in South Africa with regard to rules pertaining to Covid-19 and dance championship and competitions on a National level on any of the social media platform, and

[1.5] that first and second respondents be ordered to pay the costs of the applications

[2]. The first and second respondents are opposing this application and have submitted that:

[2.1] second respondent has legal title to the name DanceSport South Africa and the balance of convenience favours it and that the applicant has not established any clear right;

[2.2] second respondent is recognised as the custodian of dance in South Africa by both the South African Sport Confederation, the Olympic Committee as well as the World DanceSport Federation;

[3]. The applicant submitted that the purpose its requesting that the first and second respondents be interdicted is that:-

[3.1] to restrain the infringement of a copyright *in casu* trademarks in the compilation of the words "DanceSport Championship" and South Africa Open Dance Championship";

[3.2] to restrain the first and second respondents from passing off their entities as that of the applicant or that it is associated with that of the applicant;

[3.3] that the first and second respondents are imitating the applicant's trademark to gain advantage;

[3.4] that there is a reasonable likelihood that members of the dance fraternity and the general public may be confused into believing that the second respondent's business is connected with the applicant;

[3.5] that only the applicant may organise championships and national dancesport competitions of ballroom, Latin, freestyle, disco, hip-hop, wheelchair, disables, traditional and social dance style;

[3.6] Second respondent was only registered as a profit company during July 2020, after applicant had started this application;

[3.7] prior to the second respondent being registered the name used to belong to applicant;

[4]. The main fight/ contention between the applicant and the first and second is the use of the words "DanceSport (as one word) and who is the custodian of dance sport in South Africa, and the one who is the custodian of dance sport, is entitled to organise dance in South Africa.

- [5]. The main issue to be determined by this court is who has the title to the names mention in paragraph 1.1 amongst the parties.

BACKGROUND AND COMMON FACTS

- [6]. [6.1] The full historical background of "Dance Sport" is captured by the applicant in its letter¹, addressed to the CEO of South African Sports Confederation and Olympic Committee;
- [6.2] the applicant's used to call itself in the of name "The South African Dance & Dance Sport Council" ("SAD & DSC");
- [6.3] whereas the second respondent used call itself "The Federation of Dance Sport South Africa" ("FEDANSA")
- [6.4] the first respondent is the president of the second respondent Dancesport South Africa (DSSA), (formerly known as FEDANSA);
- [6.5] prior to the current dispute, the applicant was responsible for all Professional dancers in South Africa whereas the second respondent was responsible for all Amateur dancers in South Africa;
- [6.5] in 1995 the SAD & DSC (currently the applicant) and FEDANSA (second respondent) came together to form a Joint Committee,² known as DanceSport South Africa (DSSA)
- [6.6] After the formation DSSA there was disputes between them parties herein which culminated in 2001 to the extent that the applicant brought an application against the second respondent and others in the South Gauteng Local Division,³ and the court made the ruling that the parties herein be members in equal shares in DSSA a section 21 company;
- [6.7] During 2004 second respondent ordered its representative, who were representing it at DSSA to resign from DSSA with immediate effect and the applicant through its members remained a single member of DSSA.

¹ See annexure "J" dated 2nd February 2012 attached to the applicants founding affidavit

² See Annexure "J" of applicant's affidavit

³ See Annexure "F" (South African Dance & Dance Sport Council and 2 others vs DanceSport South Africa (association Incorporated under Section 21 of the Companies Act, 1973 Case Nu 200/195) court order dated 16 October 2001)

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THE NAME DANCESPORT SOUTH AFRICA (DSSA) AND THE CONTROL AND/OR CUSTODY OF DANCESPORT IN SOUTH AFRICA

[7]. In its affidavit the applicant had indicated that⁴ "As a result of internal transformation challenges within the professional ranks between blacks and whites, our partner in DSSA, FEDANSA, instead of assisting a legitimate course claimed to be in dispute with the SAD&DSC and resigned from the Joint Council. DSSA remained dormant for some time and in 2006 the SAD&DSC had a special meeting where a resolution was taken to dissolve SAD&DSC and move ALL its business into DSSA which has today amended its articles and changed its name to South African Dance Foundation (SADF)".

[8]. First respondent at paragraph 4 of his answering affidavit indicated that second respondent, has been operating under the name DSSA for the past seven years. However the second respondent has been referring to itself as DSSA, at least, since 28 January 2016 from that date, and making use of the words DanceSport, as one word⁵. In terms of the certificate of incorporation⁶ second respondent's name "DanceSport South Africa" was only registered on the 20 July 2020.

[9]. The second respondent has submitted that its aware that DanceSport South Africa (the original DSSA) was registered as section 21 company, it further stated that the applicant by changing its name from DSSA to the current name, it meant the name DSSA became obsolete and it was deregistered by the fourth respondent (CIPC), and that is why it was eventually available to be registered to it.

[10]. Most facts in this matter are of a common cause nature in this regard is made to following case:-

[10.1] *Frank v. Ohlsson's Cape Breweries Ltd*⁷, INNES, C.J., said:

"... But where the facts are really not in dispute, where the rights of the parties depend upon a question of law, there can be no objection, but on the contrary a

⁴ See Annexure J of applicant's affidavit

⁵ See annexure DP 3 of the second respondent's answering affidavit

⁶ See annexure TP1 of the second respondent's answering affidavit

⁷ 1924 A.D. 289 at p. 294

manifest advantage in dealing with the matter by the speedier and less expensive method of motion."

TRADE MARKS

[11]. On the 19 August 2015 the applicant registered the following trademarks with CIPC being "DansceSport Championship and South African Open Dance Championship in terms of the provisions of section 29(2) of the Trade Marks Act⁸, which Trade Marks are registered for a period of 10 years from date of registration.

[12]. In terms of section 34(1) of the Trade Marks Act 194 of 1993 with regard to the infringement of registered trade mark provides that-

(1) The rights acquired by registration of a trade mark shall be infringed by-

(a) the unauthorized use in the course of trade in relation to goods or services in respect of which the trade mark is registered, of an identical mark or of a mark so nearly resembling it as to be likely to deceive or cause confusion;

(b) the unauthorized use of a mark which is identical or similar to the trade mark registered, in the course of trade in relation to goods or services which are so similar to the goods or services in respect of which the trade mark is registered, that in such use there exists the likelihood of deception or confusion;

[13]. In the Eating Out case⁹ the court had to determine whether the use of the trade mark "EATING OUT" in relation to an electronic restaurant guide infringed the applicant's registered trade mark of "EAT OUT GUIDE" in class 16 in respect of, inter alia, magazines. There the court accepted that the combined effect of the degree of resemblance between the marks and goods or services must be taken into account:¹⁰

⁸ 194 of 1993

⁹ 2005 (5) SA 388 (C).

¹⁰ The Eat Out case at 394 D – H.

[14]. It is not in dispute that both the applicant and the second respondent operate in the same industry that is of dance sport, the only difference is that the applicant used to organise the professional dance and the second respondent was organising the amateur dance. As it was put by the second respondent in its affidavit¹¹ "The second respondent is well-known for organisation of amateur dancesport in South Africa and the applicant is concerned with professional dancesport" and both parties are respectively recognised by different world dance bodies.

[15]. In these circumstances, a member of the public may very well be confused in thinking that, the use of the word DanceSport by the second respondent also relates or comes from the applicant and it might not be clear to the said member of the public more so the Dance community with whom they are actually dealing with.

[16]. In *Distillers*, the court held that in exercising its discretion, it must have regard to how close the trademarks are associated and resemble one another and the extent and nature of the equivalent use. The remoter the association, or the lesser the resemblance, or the less satisfactory the equivalent use, the more disposed the Court should be to ignore the association or lean against accepting the use of the associated trade mark as being the required equivalent use¹²

[17]. A trade mark once it is registered no one can make use of it or one which is confusingly similar, by name of the second respondent, DanceSport, is more similar if not confusing to that trade mark of the applicant, therefore, the court is of the view, that currently, the applicant is the lawful holder of the above mentioned trademarks and it has exclusive use of it for a period of 10 years from date of registration.

¹¹ At paragraph 35

¹² *Distillers Corporation SA Limited v SA Breweries Limited; Oudemeester Groep Beperk v SA Breweries Limited* 1976 (3) SA 514 (A) at 539B-D.

[18]. However in terms of the said certificates¹³ of registration, they do not prohibit any person from separately using the words "Dance", "Sport", "South Africa" and or "Championship". The court is of the view that the applicant is only protected from the use of the words in the sequence that are stated in the certificates, that is "DanceSport (as one word) Championship and South African Open Dance Championship respectively.

[19]. Therefore the use of the word DanceSport South Africa (DSSA) by the second respondent is infringing upon the trade mark of the applicant.

Conclusion

[20]. *Dance is a sport and when the two parties fight, as to who is in control and the custodian of the dance, and or stopping the organised "championships" or events or even stopping dancers from participating in those organised events, the people who ultimately lose out or suffers are not the applicant or the second respondent but, the dancers and or members of the community.*

[21]. Regarding the recognition of applicant and or second respondent by various International bodies, or organisations or National bodies like SASCOC and the National Department of Sport it is still on going, this Court will not venture into that dispute;

In the result the following order is made:

1. The First and Second Respondents shall refrain from using the name DanceSport South Africa (DSSA)
2. The First and Second Respondents shall refrain from presenting themselves as the custodian of dance in South Africa under the name DanceSport South Africa (DSSA);
3. The First and Second Respondents shall refrain from organising any dance competition or championship at Provincial or National level with regard to the genre Ballroom, Latin, Freestyle, Disco, Hip Hop, wheelchair, disabled,

¹³ See annexures V and SADF 1

Traditional, and Social Dance style under the name South Africa under the name DanceSport South Africa (DSSA)

4. Prayer 4 of the Applicants notice of motion dated 09 September 2020 is hereby dismissed; and
5. Each party to pay its own costs



MATSHITSE AJ

Counsel for the Applicant:	ADV M De MEYER
Attorney for the Applicant:	F VAN WYK ATTORNEYS
Counsel for 1 st and 2 nd Respondents:	ADV LA MAISELA
Attorney for the respondents:	MAHAPA ATTORNEYS
Date of Hearing:	26 OCTOBER 2021
Date of Judgment:	25 JANUARY 2022