

Stolen Identity: The Consequences of Passing-Off

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INTRODUCTION

“Passing-off” is a wrongful form of competition. Passing-off proceedings are aimed at protecting the goodwill of an entity by prohibiting its competitors from appropriating / passing-off as their own, the entity’s identity, business, products or services and/ or otherwise prohibiting competitors from falsely associating themselves with the entity. Passing-off has been defined as “...[consisting of] a representation...that [the representor’s] business...is that of another, or that it is associated with that of another...[determined by considering] whether...there is a reasonable likelihood that members of the public may be confused into believing that the business of the [representor] is, or is connected with, that of another.”¹

Pioneer Foods (Pty) Ltd v Bothaville Milling (Pty) Ltd ZASCA 6 (2014) held that for a claim of passing-off to succeed, the claimant must prove:

1. reputation;
2. misrepresentation; and
3. damage.

LOGIK VS LOGIC

In *Logik Group Africa (Pty) Ltd v Fire Logic (Pty) Ltd*² the Supreme Court of Appeal (the “SCA”) was faced with determining whether the Eastern Cape Division of the High Court, Gqeberha (the “High Court”) had correctly ruled that “Fire Logik” had passed itself off as “Fire Logic”, a competing business in the same industry relating to fire protection and maintenance services, based on the similarity in the trading name of the former to the registered name of the latter.

ELEMENTS OF PASSING OFF

The High Court held 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.*”³

In holding that the High Court had correctly decided the matter, the SCA considered that:

1. Fire Logic had been incorporated since 1994, delivering its specific services for 27 years, where it became well-established within the Western Cape and Eastern Cape respectively.
2. On the other hand, Fire Logik was incorporated in 2015 (around 21 years after Fire Logic).
3. Upon discovering this similarity, Fire Logic had raised its concerns of passing-off.
4. Despite an undertaking by Fire Logik to not trade under this name in the Western Cape and Eastern Cape in order to “...avoid any confusion in the eyes of the public...” this was not implemented.
5. There was proof of incidents of purchase orders meant for Fire Logik being sent to Fire Logic.
6. A costing request intended for Fire Logik was sent to Fire Logic, following a Google search for the contact details of ‘Firelogic’.

A REMARK IN PASSING (EXCUSE THE PUN)

The extent of the confusion caused by the similarity in the names “Fire Logik” and “Fire Logic” is evident from the content of the SCA judgment, where whilst the SCA defined Fire Logic as ‘Logik Group’, at one point the Court inadvertently made reference to ‘Logic Group’.

CONCLUSION

A passing-off action is a vital legal mechanism that a business can use in protecting its identity, goodwill and reputation against unlawfully being relied on by- or associated with that of a competitor who seeks to gain competitive advantage.

¹ *Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc and Others*, 1977 (2) SA 916 (A).

² *Logik Group Africa (Pty) Ltd v Fire Logic (Pty) Ltd* 2025 JDR 4575 (SCA).

³ *Ibid* at para 16.



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