



**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO: CT007JUL16

In the matter between:

(Registration number: 2007/003525/06)

EDCON LIMITED

Applicant

and

GOOD FOR LIFE TRADING AND PROJECTS (PTY) LTD

Respondent

(Registration number: 2015/127388/07)

Decision handed down on 03 OCTOBER 2016

DECISION

INTRODUCTION

- [1] This is an application in terms of section 160 (3) (b) (ii) and Regulation 153 of the Companies Act No. 71 of 2008 (“the Act”).
- [2] The Applicant applies for a default order that the Respondent be ordered to change its name, “Good For Life Trading and Projects (Pty) Ltd” to “2015/127388/07 (Pty) Ltd” because it does not comply with section 11 of the Act.

BACKGROUND

- [3] The Applicant is Edcon limited, a public company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at Edgardale, 1 Press Avenue, Crown Mines, Johannesburg, Gauteng.
- [4] The Respondent is Good For Life Trading and Projects (Pty) Ltd, a private company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at 3rd 40 Avenue, Alexandra Township, Gauteng.
- [5] The Applicant is the registered proprietor of the “GOOD FOR LIFE” names in class 35 in the Republic of South Africa in terms of the Trade Marks Act No. 194 of 1993.
- [6] The name “GOOD FOR LIFE” is registered under the following class:

a) 2003/09271 GOOD FOR LIFE trademark in class 35 in respect of advertising; business management; business administration; office functions.

[7] The Applicant filed an objection to the name "GOOD FOR LIFE" in terms of regulation 142 (1) (a) and (1) (b) of the Act.

[8] The applicant seeks the following relief:

"Default Judgment in terms of Section 160 (3) of the Companies Act 71 of 2008 and Regulation 153 of the Companies Regulations of 2011

- 1. directing the First Respondent to change its name to one which does not incorporate a mark confusingly and/or deceptively similar to the Applicant's GOOD FOR LIFE trade mark;*
- 2. in the event that the First Respondent fails to comply with the order set out in paragraph 1 above within 3 months from the date of the order, that the Second Respondent be directed, in terms of Section 160 (3) (b) (ii) read with Section 14(2) of the Companies Act, to change the First Respondent's name to "2015/127388/07 (Pty) Ltd", as the First Respondent's interim company name on the Companies Register; and*
- 3. granting the Applicant further and/or alternative relief."*

APPLICABLE LAW

[9] Before I deal with the objection and/or application filed, I wish to highlight what I believe to be the relevant provisions of the Act.

Section 11 (2) (a) (b) and (c) of the Act

[10] Section 11 (2) (a), (b) and (c) reads as follows:

The name of a company must –

(a) *not be the same as -*

(i) *the name of another company, domesticated company, registered external company, close corporation or co-operative;*

(ii) *a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of the section 12 (9), or as a business name in terms of the Business Act, 1960 (Act 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;*

(iii) *a registered trade mark belonging to a person other than the company, or 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;

(iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act 17 of 1941), except to the extent permitted by or in terms of that Act;

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless –

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

(ii) in the case of a company name similar to defensive name or to business name referred to in paragraph (a) (ii), in the company, or a person who controls the company, is the registered owner of that defensive name or business name;

(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; or

- (v) *in the case of a name similar to a mark, word or expression referred to in paragraph (a) (iv), the use of that mark, work or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941;*
- (c) *not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company –*
 - (i) *part of, or associated with, any other person or entity;*
 - (ii) *is an organ of state or a court, or is operated, sponsored, supported or endorsed by the State or by any organ of state or a court;*
 - (iii) *is owned, managed or conducted by a person or persons having any particular educational designation or who is a regulated person or entity;*
 - (iv) *is owned, or operated, sponsored, supported or endorsed by, or enjoys the patronage of, any –*
 - (aa) *foreign state, head of state, head of government or administration or any department of such a government or administration; or*
 - (bb) *international organisation; and*

(cc) *not include any word, expression or symbol that, in isolation or in context within the rest of the name, may reasonably be considered to constitute –*

(i) *propaganda of war;*

(ii) *incitement of imminent violence; or*

(iii) *advocacy of hatred based on race, ethnicity, gender or religion, or incitement to cause harm.”*

EVALUATION

[11] The name “GOOD FOR LIFE.” is a trade mark registered under the following class:

a) 2006/23885 CLA trademark in class 35 in respect of advertising; business management; business administration; office functions.

[12] The Deponent to the Applicant's affidavit Charles Mzwandile Vikisi in paragraphs 6, 7 and 8 of states that:

“ 6.

The GOOD FOR LIFE trademark has been used extensively by the Applicant in close relation to its retail services provided through its JET

stores as tag line. The JET retail chain is one of the largest clothing retailers in Southern Africa, with more than 450 stores across Southern Africa. The first JET store was opened in 1976 In South Africa and today, the Applicant's JET stores are located in various towns and cities in all nine provinces. In this regard, I annex a print out from the applicant's website detailing its history and, the creation of the JET brand in 1976, marked "CV5".

7.

The Applicant operates a website at www.jetonline.co.za which is dedicated to its JET stores and provides details of the goods and services provided by the Applicant under its JET and related trade marks. The applicant also has a Facebook page dedicated to its JET trade mark, the name of which is JET GOOD FOR LIFE, as can be seen from the annexed screenshot of the applicant's Facebook page, marked "CV6".

[Own emphasis and underlining]

8.

As a result of the extensive use of the GOOD FOR LIFE trade mark by the applicant in relation to its retail services and JET stores, these stores have become known by the public as JET GOOD FOR LIFE. To illustrate this, I annex as "CV7", a print out from the Cresta Shopping Centre website at www.crestashoppingcentre.co.za, which lists the applicant's JET store in

this manner. The reference to the JET stores in this manner has been initiated or solicited by the Applicant and is merely an example of how closely associated the mark GOOD FOR LIFE has become with the Applicant and its JET stores.”

[Own emphasis and underlining]

[13] The first issue is whether the name GOOD FOR LIFE is the same as the registered trade mark or marks belonging to the Applicant and whether the name of the Respondent is confusingly similar to the trade mark, mark belonging to the Applicant.

[14] The second issue is whether the name GOOD FOR LIFE would falsely imply or suggest, or be as would reasonably mislead a person to believe incorrectly, that the Respondent is part of, or associated with the Applicant.

FINDING

[15] The trade marks relied upon by the Applicant in respect of the alleged infringement under section 34(1) (b).

[16] I do not consider it necessary to deal with Applicant’s alleged infringement under section 34 (1) (b) of the Trade Mark Act as disputes relating to trade mark infringement does not fall within the jurisdiction of the Tribunal.

- [17] In paragraph 7 the deponent to the Applicant's affidavit states that the Applicant has a Facebook page dedicate to its JET trade mark under the name JET GOOD FOR LIFE as opposed to its registered trade mark GOOD FOR LIFE.
- [18] Further, in paragraph 8 the deponent to the Applicant's affidavit states that the Applicant's JET stores have become known by the public as JET GOOD FOR LIFE as opposed to its registered trade mark GOOD FOR LIFE.
- [19] No convincing evidence was furnished in which the use of the mark would reasonably mislead a person and/or consumers to believe that the Respondent is part of or associated with the Applicant. Confusingly similar to the trade mark, mark belonging to the Applicant.
- [20] Further, no evidence was furnished in which the use of the mark would reasonably mislead a person and/or consumers to believe that the Respondent is part of or associated with the Applicant.
- [21] In my view the application is not sufficient on the based on lack of evidence which would reasonably mislead consumers to believe that the Respondent is part or associated with the Applicant.
- [22] Therefore the application cannot succeed due to insufficient information, to conclude that consumers would reasonably believe that the Respondent is part of or associated with the Applicant, in support of its application.

ORDER

In the result the following order is made:

- a) The Application is dismissed.

MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 03 OCTOBER 2016