



**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO: CT002NOV2016

In the matter between:

**GROWTHPOINT PROPERTIES LIMITED
(Registration number: 1987/004988/06)**

Applicant

and

**GROWTH POINT PROPERTY GROUP PROPRIETARY LIMITED
(Registration number: 2015/29850707)**

Respondent

Decision handed down on 05 APRIL 2017

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, "Growth Point Property Group Proprietary Limited in terms of section 160 (3) (b) (ii) of the Companies Act, to choose a new name (which does not incorporate any of the Applicant's registered trademarks, or anything that can be considered to be confusingly thereto) and the Respondent amends its Memorandum of Incorporation accordingly, within a period and on conditions that the Tribunal considers just, equitable and expedient in the circumstances.

BACKGROUND

- [3] The Applicant is Growthpoint Properties Limited, a public company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at the Place, 01 Sandton Drive, Sandton, Gauteng.
- [4] The Respondent is Growth Point Property Group Proprietary Limited, a private company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at No. 328 Victoria Road, Pietermaritzburg, Kwa-Zulu Natal.

- [5] The Applicant is the registered proprietor of the "GROWTHPOINT" name in classes 35 and 36 in the Republic of South Africa in terms of the Trade Marks Act No. 194 of 1993.
- [6] Further, the Applicant is the registered proprietor of the "GROWTHPOINT PROPERTIES" name in classes 35 and 36 in the Republic of South Africa in terms of the Trade Marks Act No. 194 of 1993.
- [7] Furthermore, the Applicant is the registered proprietor of the "GROWTHPOINT" logo in classes 35 and 36 in the Republic of South Africa in terms of the Trade Marks Act No. 194 of 1993.
- [8] The name "GROWTHPOINT" is registered under the following classes:
- a) 2007/17204 GROWTHPOINT trademark in class 35 in respect of advertising; business management; business administration; office functions; and
 - b) 2007/17205 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs.
- [9] The name "GROWTHPOINT PROPERTIES" is registered under the following classes:
- a) 2007/17206 GROWTHPOINT PROPERTIES trade mark in class 35 in

respect of advertising; business management; business administration;
office functions; and

- b) 2007/17207 GROWTHPOINT trademark in class 36 in respect insurance;
financial affairs; monetary affairs; real estate affairs.

[10] The logo "GROWTHPOINT" is registered under the following classes:

- a) 2007/17208 GROWTHPOINT trademark in class 35 in respect of
advertising; business management; business administration; office
functions;
- b) 2007/17209 GROWTHPOINT trademark in class 36 in respect insurance;
financial affairs; monetary affairs; real estate affairs;
- c) 2007/23343 GROWTHPOINT trademark in class 35 in respect of
advertising; business management; business administration; office
functions;
- d) 2007/23344 GROWTHPOINT trademark in class 36 in respect insurance;
financial affairs; monetary affairs; real estate affairs;
- e) 2007/23345 GROWTHPOINT trademark in class 35 in respect of
advertising; business management; business administration; office
functions; and

f) 2007/23346 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs.

[11] The Applicant filed an objection to the name “GROWTHPONT” in terms of regulation 142 (1) (a) and (1) (b) of the Act.

[12] Further, the Applicant filed an objection to the name “GROWTHPOINT PROPERTIES” in terms of regulation 142 (1) (a) and (1) (b) of the Act.

[13] Furthermore, the Applicant filed an objection to the logo “GROWTHPOINT” in terms of regulation 142 (1) (a) and (1) (b) of the Act.

[14] The applicant seeks the following relief:

“THE RESPONDENT BE ORDERED TO CHOOSE A NEW NAME”

APPLICABLE LAW

[15] 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

[16] 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, word 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

[17] The name and logo "GROWTHPOINT" is a trade mark registered under the following classes:

17.1 2007/17204 GROWTHPOINT trademark in class 35 in respect of advertising; business management; business administration; office functions; and

17.2 2007/17205 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs.

[18] The name "GROWTHPOINT PROPERTIES" is registered under the following classes:

18.1 2007/17206 GROWTHPOINT PROPERTIES trade mark in class 35 in respect of advertising; business management; business administration; office functions; and

18.2 2007/17207 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs.

[19] The logo "GROWTHPOINT" is registered under the following classes:

19.1 2007/17208 GROWTHPOINT trademark in class 35 in respect of advertising; business management; business administration; office

functions;

19.2 2007/17209 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs;

19.3 2007/23343 GROWTHPOINT trademark in class 35 in respect of advertising; business management; business administration; office functions;

19.4 2007/23344 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs;

19.5 2007/23345 GROWTHPOINT trademark in class 35 in respect of advertising; business management; business administration; office functions; and

19.6 2007/23346 GROWTHPOINT trademark in class 36 in respect insurance; financial affairs; monetary affairs; real estate affairs.

[20] The Deponent to the Applicant's affidavit Roland Krabbenhoft in paragraph 17 states that:

"17 *I am advised that one of the authorities on confusing similarity between names is The South African Law of Trade Marks (4th edition) by the authors Webster and Page. This publication enumerates a number of*

principles that our High Courts have applied in determining confusing similarity between words, whether these words are in nature of names or trademarks. Notably, whether a comparison of marks or names is considered, due allowance must be made for the imperfection of human recollection. Furthermore, the competing marks or names must be compared as whole with due consideration given to any dominant feature, and, in situations where the whole of the objector's mark has been adopted by the offender, whether the identity of the objector's mark has been lost.

[21] The first issue is whether the name GROWTH POINT PROPERTY GROUP is the same as the registered trade mark or logo belonging to the Applicant and whether the name of the Respondent is confusingly similar to the trade mark and logo belonging to the Applicant.

[22] The second issue is whether the name GROWTH POINT PROPERTY GROUP and 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

[23] The Applicant brought an objection in terms section 11 (2) of the Act.

[24] It is my considered view that the name GROWTH POINT PROPERTY GROUP

is the same as the registered trade mark or logo belonging to the Applicant and the name of the Respondent is confusingly similar to the trade mark and logo belonging to the Applicant.

[25] Further, it is my considered view that the name GROWTH POINT PROPERTY GROUP 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.

[26] Therefore the application succeeds.

ORDER

In the result the following order is made:

- a) The application is granted.
- b) The Respondent is directed to change its name to one which does not incorporate and is not confusingly and/or deceptively similar to GROWTHPOIT and GROWTPOINT PROPERTIES trademarks.
- c) The Respondent is further directed to file a notice of an amendment of its Memorandum of Incorporation, within 60 days of receipt of this order.

MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 05 APRIL 2017