

**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**  
**“The Tribunal”**

**Case Number: CT012MAR2017**

**In the matter between:**

**Fundi Capital (PTY) Ltd**

**Applicant**

**(Registration number: 1996/003961/07)**

**AND**

**Eduloan (PTY) LTD**

**Respondent**

**(Registration number: 2016/053618/07)**

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**AMENDED DECISION**

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**INTRODUCTION:**

**[1]** The Applicant is Fundi Capital (Pty) LTD, a private company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1996/003961/07, duly represented herein by Amasi Mwela, its Chief Executive Officer.

**[2]** The Respondent is Eduloan (Pty) LTD, a private company duly registered in terms of the company laws of the Republic of South Africa, with registration number 2017/053618/07, the representative of the company being cited as Mashudu Polly Mavhusha.

**[3]** The Applicant requests that the Tribunal grant relief that the Respondent changes its name such that it does not contain the words “Eduloan” or any other variations thereof.

### **Submissions by Applicant**

The applicant has supplemented its submission by providing proof that the following names have been duly registered as trademarks: (i) Eduloan unlocking potential, duly registered with the Companies and Intellectual Property Commission (CIPC) since 31 October 2014; (ii) EDULOAN, duly registered with CIPC with effect from 20 August 2004; and (iii) EDU-LOAN, registered with CIPC from 02 July 2010. No reason has been advanced by the applicant as to why this information was not submitted with the initial application, or why it didn't submit that it was the registered owner of these trademarks.

### **Application of the Law to the Case**

The Applicant has applied to the tribunal for a default order in terms of Regulation 153 of the Companies Act as it is alleged in the affidavit in support of this application that the application was sent to the Respondent by registered post and that the Respondent has not filed a response.

It is apparent from this new information submitted by the applicant that section 11(2) is relevant to this application. Of particular importance is S. 2(a), which provides that the name of a company must not be the same as the name of another company. The applicant has submitted that its subsidiaries still bear the name Edu-loan, namely Edu-Loan Technologies (Pty) Ltd, Edu-Loan Finance (Pty) Ltd and Eduloan (Private) Limited, a company registered in Zimbabwe. Sections 11(2) (a) (iii) and S.11 (2) (b) (iii) provide further that the name of a company must not be the same as a registered trade mark and must not be confusingly similar to a name or trade mark, in the case of a name similar to a trade mark, the company is the registered owner of the business name or trade mark, or is authorised by the registered owner to use it. Clients and potential clients of the applicant may be misled into thinking that respondent's company is the same or is affiliated to applicant's company and it is likely to cause confusion amongst members of the public.

The CIPC should not have registered respondent's name in 2016, as at that time, the trade marks were already registered in favour of applicant.

The application for a default order by the Applicant to have the Respondent's name changed in compliance with S.11 of the Companies Act (Act 71 of 2008) is upheld.

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B. Zulu

14 August 2017