

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01374ADJ/2023

In the matter between:

TRENCON CONSTRUCTION (PTY) LIMITED	**First Applicant**
TRENCON PROJECTS (PTY) LIMITED	**Second Applicant**
TRENCON AFRICA(PTY) LIMITED	**Third Applicant**
TRENCON CIVILS (PTY)LIMITED	**Fourth Applicant**
TRENCON BUILDING (PTY) LIMITED	**Fifth Applicant**
TRENCON CONCESSION (PTY) LIMITED	**Sixth Applicant**
TRENCON CONSTRUCTION DFA PPP (PTY) LIMITED	**Seventh Applicant**
TRENCON BLISS (PTY)LIMITED	**Eighth Applicant**

and

TRENCON GROUP(PTY) LIMITED (Registration Number. 2020/577509/07)	**First Respondent**
COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION	**Second Respondent**

DECISION

Date of Decision: 30th November 2023
Member of the Tribunal: Hlaleleni Kathleen Dlepu

INTRODUCTION

1. The First Applicant is **TRENCON CONSTRUCTION (PTY) LIMITED**, a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 1995/001822/07 whose principal place of business is 42 Main Road Eastleigh, Edenvale, Gauteng. For the purposes of this judgement the second to the eighth respondents will be referred to as Companies under the umbrella and they are related, they share the same address, contact details, shareholders, and Directors and they pursue their interests as a group and will be referred to jointly as the Applicants as they are related.

2. The First Respondent is TRENCON GROUP (**PTY) LTD, a company duly incorporated in accordance with the company laws of the Republic of South Africa with registration number 2020/577509/07** whose registered principal place of business is 278585 Moemang Marquard, Free State.9301

3. The Second Respondent is the **COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION** resident at DTI Campus 77 Meintjies Street

4. The Applicants as related companies applies to the Companies Tribunal in terms of Section 11(2) of the Companies Act 71 of 2008 ("the Companies Act"), a name of a company must not be the same as the name of another company, domesticated company, registered external company, close corporation or co-operative and must not be confusingly similar.

APPLICANTS SUBMISSIONS

5. On the 1st of August 2022 the Applicants came to know about the First Respondents' existence when by chance an employee conducted a search on the name **"TRENCON** on the Bizportal,gov.za website .On the advice of the Applicants Attorneys ,a request was sent to CIPC on the 4th of August 2022,informing it that the name of the First Respondent is offensive and the Applicants were advised by the CIPC to refer to section 160 of the Companies Act for guidance should they wish to file a company name objection in accordance with form CTR 142 issued in terms of section 180 to 184 of the

Companies Act 2008,and Regulation 145 of the Companies Regulations,2011

6. The Applicants subsequently filed an objection in accordance with form CTR 142 and requested the Companies Tribunal to grant the order, ordering the second Respondent to change its name and registration and use of the name **TRENCON GROUP**.as it was offensive in terms of section 11(2)(i) and (ii), section 11(2)(b)(i)1 and section 11(2)(c)(i) of the Companies Act 71 of 2008.

7. The Applicants requested a determination in this regard by the Companies Tribunal together with a direction that the First Respondent choose a new name which does not include or contain the words **"TRENCON** "or any word similar thereto, and take all the required steps to effect the name change, failing which the First Respondents name will be changed to "2020/57709/07 "(PTY)Limited

8. It is evident from the Applicants affidavit deposed to by Yavani Singh-Ninan who was duly authorized on the 30th of January 2023 that the Applicants objected to the offensive name of the First Respondent

9. It is also evident from the Applicants affidavit, the all the related companies were referred to as **TRENCON GROUP OF COMPANIES**, and the first Applicants Company was registered in 1995 whilst the First Respondents Company was only registered in 2020. And the Applicants' first company **TRENCON CONSTRUCTION** which is the First Applicant was registered in 1995 and has been in operation for the last (27) twenty-seven years. The other TRENCON related companies were also registered log before the First Respondents registration of its company in 2020.

10. The Applicants were incorporated and joined in what it is today is called the **TRENCON GROUP** with different business activities. The Applicants has built a reputation of accountability, integrity, and transparency and is known as one of the leading construction groups.

11. The Applicants uses the name **TRENCON** in all its business and projects and such name appears in many, if not all, publications, and formal documents such as bids and tenders, project scoping, invoices and the like. Because the Applicants cooperate with each other and work hand -in hand as the **TRENCON GROUP** it is not necessary for suppliers, customers, and potential customers to distinguish between the Applicants.

12. The Applicants observed further company offensive names being registered and the Applicants took issue and instructed its representatives to trace the sole Director of the First Respondent namely ("Molahlehi Martin Hlalele") at its registered address and postal address being 2785 Moemaneng, Marquard, Free State and served the company name objection on the First Respondent. The Applicants sent a letter to the said Director after contacting him telephonically.

13. The First Respondent was informed of the name objection on the 14th of February 2023 and the First Respondents Director the said "Molahlehi Martin Hlalele" responded to the Applicants' representative with a voice note on WhatsApp confirming receipt of the letter and confirmed noting the names of the Applicants. He further submitted and responded to the Applicants' representative that the name of his company is "TRENCON GROUP" and according to him, the names were different and for that reason he could not see why he should change the name of his company numerous

14. Further letters were written to him with no response and despite being informed of the offensive name and after being advise of the possible application the first respondent did not respond nor oppose the Application not oppose it.

15. Despite various correspondence the Respondent has failed to deregister its name

16. The Applicants submits that the First Respondents name "TRENCON GROUP" is confusingly similar to its well-known **TRENCON** group of interrelated companies and trademark.

17. The Applicants have extensive common law and statutory rights in the name **TRENCON** since 1995. The Respondent was only registered in 2020.

18. It is not known in what industry it operates in. The two names are confusingly similar, and this will affect the Applicants reputation, good name and integrity and it will also affect the Applicants financially.

19. The Applicants argues that the First Respondents name is confusingly similar to that of the Applicants and its related companies, and this would deceive the public. And that the First Respondent was made aware of the offensive name

and has no intention of changing the offensive name and continues to use the Applicants similar name without the Applicants permission and authority. The continued use of the similar Applicants name by the First Respondent will confuse the market and customers and members of the public will be deceived and confused into thinking that the First Respondent is related to the Applicants

APPLICABLE LAW

20. Section 11 of the Companies Act provides the criteria for names of companies. Subsection (2) is most relevant and states as follows:

"(2) the name of a company must –

(a) not be the same as, or confusingly similar to –

(i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names;

(ii) ... Not relevant

(iii) a registered trademark belonging to a person other than the company, or a mark in respect of which an application has been filed in the Republic for registration as a trademark or a well-known trademark as contemplated in section 35 of the trademarks act; or

(iv) ... Not relevant

(b) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company –

(i) is part of, or associated with, any other person or entity;

..."

EVALUATION AND FINDINGS

21. Section 11 (2) of the Companies Act requires me to determine whether the name of the respondent is confusingly similar to that of the Applicants well-known name and trademark. The names both start with the word **TRENCON** in them, and the First Respondent's name "TRENCON GROUP" is misleading members of the public to believe that it is indeed a group of Companies related to the Applicants. The names look similar and sound similar and are likely to confuse the public.

22. When members of the public see the first Respondent's name, they will think of the Applicants. a similar business. This may give members of the public the impression that the First Respondent owns the Applicants which has a potential to cause reputational damage and causing financial harm to the Applicants.

23. The purpose of section 11 of the Companies Act is to protect names from being passed off by new companies registering similar names at the expense of the original name holder of the company or trademark.

24. Having considered the Applicants' submissions, I find in favour of the Applicants. I therefore make the following order:

ORDER

a) I find in favour of the Applicant and its related companies who are joint Applicants in this Application.

b) The First Respondent is directed to change its name to one which does not incorporate and is not confusingly and or deceptively similar to Applicant's**.** It should not include the word **TRENCON** and or **TRENCON GROUP** in any form.

c) The First Respondent is to file a notice of an amendment of its Memorandum of Incorporation, within 60 days of receipt of this order in order to change its name as per above.

d) In the event that the First Respondent fails to comply with the order as aforementioned, within 3 months, from the date of the order, that Companies and Intellectual Property Commission CIPC be directed, in terms of Section 160(3) (b) (ii) read with section 14(2) of the Act, to change the respondent's name to its registered company number being **2020/577509//07** as the Respondent's interim company name on the Companies register.

e) The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.

f) This Determination must be served on the First Respondent and the Registrar of Companies and Intellectual Property Commission.

HLALELENI KATHLEEN DLEPU
MEMBER OF THE COMPANIES TRIBUNAL