IN THE COMPANIES TRIBUNAL

CASE NUMBER: CT01763/ADJ/2024

**In the matter between:**

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|---|---|
| **CENTURY 21 REAL ESTATE LLC** | **APPLICANT** |
| and | |
| **CENTURY 21 PROPERTIES (PTY) LTD.** | |
| (REGISTRATION NO. 2023/756861/07) | **FIRST RESPONDENT** |
| **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)** | **SECOND RESPONDENT** |

**Tribunal member:** D Terblanche
**Date of decision:** 23 April 2025

DECISION AND§§ REASONS

**THE PARTIES**

1. The Applicant is Century 21 Real Estate LLC (hereinafter referred to as" the Applicant"), a limited liability company organized and existing under the laws of the State of Delaware, with a registered address at 175 Park Avenue, Madison, New Jersey, 07940, United States of America.

2. The First Respondent is Century 21 Properties (Pty) Ltd. (hereinafter referred to as "the First Respondent"), a South African company incorporated on 18 May 2023 in terms of the Companies Act

71 of 2008 ("the Act"), registration no. 2023/756861/07, with its registered address at 94 Pritchard Street, Schreiner Chambers, Shop 4 and 5, Johannesburg, Gauteng, 2001.

3. The Second Respondent is the Companies and Intellectual Property Commission (CIPC) (hereinafter referred to as "the Second Respondent"), a juristic person established in terms of Section 189 of the Act, situated at the DTIC Campus, Block F, 77 Meintjies Street, Sunny Park, Pretoria, Gauteng. The Applicant does not seek an award for costs against the Second Respondent, except if the Second Respondent opposes these proceedings. The Applicant cited the Second Respondent –

   3.1. In its official capacity as the entity responsible for the function of the Commission established in terms of that Act; and
   3.2. Because the relief the Applicant seeks from the Tribunal requires an amendment to the Register of Companies insofar as the Applicant seeks the amendment of the First Respondent's registered name.

**THE APPLICATION**

4. The Applicant brought this default application before the Companies Tribunal (the Tribunal) in terms of Section 160(1) of the Act for an order that the First Respondent's name, Century 21 Properties (Pty) Limited, does not satisfy the requirements of Section 11 of the Act, and that the First Respondent be directed to choose a new name, as provided for in Section 160(3)(b)(ii) of the Act. The Applicant further seeks an order directing the Second Respondent to change the First Respondent's name to "2023/756861/07 (Pty) Limited" as an interim measure, in terms of Section 160(3)(b)(ii) read with Section 14(2) of the Act, in the event of the First Respondent failing to change its name within 3 months from the date of any order granted by the Tribunal.

5. In considering whether the Tribunal may grant the Applicant the relief it seeks, the Tribunal must first assess whether the application is in order, i.e., that the Applicant has adhered to the relevant timeframes, prescribed forms and procedures.

6. Once the Tribunal has determined the procedural aspects of the application, the Tribunal will consider the substantive issues, namely, whether the first respondent's name, registration or use of its name, satisfies the requirements of this Act.

**PRELIMANARY MATTERS**

7. On 22 April 2024, the Applicant electronically lodged the Company Name Objection Application with the Tribunal, in terms of sections 11(2) and 160 of the Act, and in accordance with regulation 142 of the Regulations, 2011.

8. Joan T. Pinaire (Pinaire), the Senior Vice President, Intellectual Property Law of Anywhere Real Estate Inc. and Legal Counsel of the Applicant, deposed to the founding affidavit in support of the application. I am satisfied that the deponent is duly authorised to depose to this affidavit on behalf of the Applicant and to represent it in these proceedings.

9. Jani Cronje (Cronje), an attorney practising as an associate at the Applicant's attorneys of record, deposed to the affidavit in support of the default application.

10. In terms of regulation 142(2), the Applicant was required to serve a copy of the Company Name Objection Application and the supporting documentation within five (5) business days after receipt of the stamped Form CTR142 from the Tribunal (on 12 June 2024), on the Respondents.

11. It appears from the record before the Tribunal that the Applicant successfully served the Company Name Objection Application on the First and the Second Respondents respectively via email on 22 April 2024. i.e., within the prescribed 5 days. The Applicant did not get a response from the First Respondent, and an acknowledgement of receipt from the second Respondent by return email.

12. On 25 April 2024, the Deputy Sheriff served the application on the first Respondent at the First Respondent's registered address by affixing a copy on the First Respondent's principal door.

13. In terms of regulation 143 the Respondents were required to serve and file an answer within twenty (20) business days of service of the Company Name Objection Application, should they have wanted to oppose the Company Name Objection Application. The deadline for the Respondents to serve and file their answer have passed without the Respondents having filed and served their respective answers opposing the application. Therefore, the Respondents are in default.

14. Regulation 153 (1) of the Regulations promulgated under the Act, empowers the Tribunal to issue default orders in instances where a person or persons who was served with an initiating document has not filed a response within the prescribed period, namely, within 20 days, as per regulation 143(2).

15. In terms of regulation 153(2)(b), the Tribunal may make an appropriate order if it is satisfied that the notice or application was adequately served in terms of sub-regulation (1).

16. I am satisfied that the Applicant adequately served the application and supporting documentation on the respondents in terms of regulation 153(2), and that the Tribunal may consider the application by default against both Respondents.

**THE APPLICANT'S SUBMISSIONS**

17. The Applicant has been trading since 1971. It is a member of Anywhere Real Estate Inc. (formerly known as Realogy Corporation), a global provider of real estate and relocation services and parent company of some of the world's leading real estate brokerage brands and service businesses.

18. The Applicant has an interest in the name of the First Respondent for the purpose of Section 160 of the Act as the dominant element of the First Respondent's name, Century 21 Properties (Pty) Limited, is "CENTURY 21", which is visually, phonetically and conceptually identical to the Applicant's well-known and registered CENTURY 21 trademarks, in which the Applicant has a major and direct commercial interest.

19. The First Respondent's objects are not disclosed in the Second Respondent's records, meaning that it can conceivably conduct any type of business including the types of businesses the Applicant conducts.

20. The Applicant is the proprietor of the well-known CENTURY 21 and C21 trademarks, with approximately 990 trademarks registered and pending, worldwide. As part of this portfolio, the Applicant owns numerous trademark registrations in South Africa, including marks in respect of real estate services.

21. The Applicant's first CENTURY 21 trademark registrations date back to 6 October 1975, while its first use of the CENTURY 21 marks commenced many decades ago. The First Respondent on the other hand, was only incorporated on 18 May 2023. The CENTURY 21 trademarks are exclusively associated with the Applicant and its business through its South African master sub-franchisor and franchisees.

22. The Applicant is the franchisor of one of the world's largest residential real estate sales organizations,

providing training, management, administrative and marketing support for the CENTURY 21 System. As part of its franchising efforts, the Applicant has a presence in over 80 countries, with its network comprising of approximately 14,250 independently owned broker offices and over 147,000 affiliated sales professionals, globally. As part of this global network, the Applicant has several active master sub-franchisors, including in South Africa. In fact, there are currently 50 CENTURY 21 local franchisees in South Africa, represented by approximately 400 estate agents across the country.

23. According to the Applicant, the First Respondent's name violates Section 11(2)(b) of the Act, in that, -

23.1. The First Respondent's name, Century 21 Properties (Pty) Limited, is confusingly similar to the Applicant's registered CENTURY 21 trademarks, which are well-known in South Africa.

23.2. There is a high likelihood of confusion due to the First Respondent's name, which closely resembles the Applicant's trademarks, to which the Applicant also holds prior common law rights.

23.3. This similarity likely creates confusion among the public, leading them to believe there is a connection between the Applicant and the First Respondent, when none exist.

23.4. The use of the First Respondent's name has not been authorized by the Applicant.

24. The Applicant asserts that the First Respondent will gain an unfair advantage and harm the distinctive character and reputation of the Applicant's well-known trademarks. Due to the Applicant's strong reputation, the First Respondent's name is likely to mislead the public into believing there is a connection or authorization from the Applicant, when, in fact, no such connection exists.

25. Accordingly, the First Respondent's company name does not comply with the provisions of Section 11(2)(c) of the Act, in that it falsely implies, and suggests, and is such as would reasonably mislead a person to believe incorrectly, that the First Respondent is part of, or associated with, the Applicant.

26. The Applicant requests the Tribunal to make a determination in terms of Section 160(1) of the Act that the First Respondent's name does not comply with Sections 11(2)(b) and 11(2)(c)(i) of the Act, and to -

26.1. direct the First Respondent, in terms of Section 160(3)(b)(ii), to choose a name which does not consist of, or incorporate, the CENTURY 21 trademark, or any other marks which are confusingly and/or deceptively similar to the Applicant's CENTURY 21 or C21 trademarks;

26.2. direct the Second Respondent, in the event that the First Respondent fails to change its name in terms of Section 160(3)(b)(ii) read with Section 14(2) of the Companies Act within 3 months from the date of the order, to change the First Respondent's name to 2023/7"56861/07 (Pty) Limited", as the First Respondent's interim company name on the Register of Companies; and

26.3. orders the First Respondent to pay the Applicant's costs in terms of Regulation 156 of the Act.

**LEGAL PROVISIONS, ANALYIS AND FINDINGS**

27. Section 160(1) of the CA provides that:

> "Any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act."
> (My underlining)

28. Section 160(2)(b) of the CA provides that:

> "An application in terms of subsection (1) may be made … on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case."
> (My underlining)

29. Sections 11(2)(a), (b) and (c) of the CA, as far as they are applicable, read as follows:

> "(2) The name of a company must-
>
> (a) not be the same as -…
>
> (iii) a registered trade mark 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 trade mark or a well-known trade mark as contemplated in

section 35 of the Trade Marks Act, 1993 /Act No. 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.

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

(i) in the case of names 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 a defensive name or to a business name referred to in paragraph (a){ii), 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 authorized by the registered owner to use it; or

(iv) 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) is part of, or associated with, any other person or entity."

(My underlining)

30. The submissions and evidence presented by the Applicant in support of its objection to the first Respondent's name are detailed in the Applicant's founding affidavit in support of this application, along with the attached documentary evidence, which is unchallenged.

31. The uncontradicted evidence before the Tribunal clearly shows that the Applicant has an interest in the first Respondent's name and has good cause to bring this application.

32. I have considered the evidence presented by the applicant to the Tribunal regarding its ownership,

use, and goodwill derived from its ownership and use of the Century 21 trademarks. I accept the Applicant's evidence in this regard.

33. In the case of Plascon-Evans Paints (TVL) Ltd. v Van Riebeeck Paints (Pty) Ltd., CORBETT JA cited MARGO J, who delivered the judgment in International Power Marketing (Pty) Ltd v Searles Industrials (Pty) Ltd. 1983(4) SA 163 (T), regarding the meaning of "likely to deceive or cause confusion'.

> " It was stated that "it is sufficient for the plaintiff to show that a substantial number of persons will likely be confused about the origin of the goods or the existence or non-existence of such a connection. The comparison must take into account the sense, sound, and appearance of the marks. The marks should be viewed as they would be encountered in the marketplace, considering the relevant surrounding circumstances. They must be assessed both side by side and separately. It should be remembered that the ordinary purchaser may encounter goods with the defendant's mark with an imperfect recollection of the registered mark. The main or dominant feature or idea of each mark must be taken into account since marks are often remembered based on general impressions or significant features rather than by a detailed recollection of the whole. Finally, consideration must be given to how the marks are likely to be used, for instance, how name marks appear alongside a general description of the goods."

34. The Tribunal must determine whether the First Respondent's name is in violation of Sections 11(2)(b) and 11(2)(c)(i) of the Act. Specifically, it needs to assess whether the First Respondent's name is confusingly similar to the Applicant's registered trademarks, or if it falsely implies or suggests, or could reasonably mislead someone into believing that the company is associated with or part of the Applicant.

35. For this exercise the Tribunal has to compare the First Respondent's name and the Applicant's trade mark side-by-side. This side-by-side comparison reveals that the Applicant's trade mark and the First Respondent's name prominently feature the word and numbers "CENTURY 21". This is also the most outstanding and unique element of the First Respondent's name and the Applicant's trademarks.

36. The remainder of the names, namely, "Real Estate LCC" in the case of the Applicant, and "Properties (Pty) Ltd." in the case of the First Respondent, differentiates the parties' names.

37. The terms "Real Estate" and "Property" pertain to the same economic sector. In the view of the Tribunal, these terms do not adequately differentiate the Applicant and the First Respondent. To the

contrary, they are likely to increase the confusion the average consumer may experience in trying to differentiate between the Applicant and the First Respondent. This is actually further acerbated by the visual appearance of the Applicant's trademark with imagery of a building (property).

38. Given the potential confusion that the First Respondent's name may cause in the market, it could gain an unfair advantage by leveraging the Applicant's name, reputation, goodwill, and investments in its brand. This is particularly concerning since, although the records of the Second Respondent do not disclose the First Respondent's objectives, the name of the First Respondent suggests that it is likely to operate and compete in the same markets where the Applicant has been involved for decades.

39. Additionally, the significant similarity between the First Respondent's name and the Applicant's trademark is likely to mislead or confuse the public into believing that this company is affiliated with the Applicant's business or that the first Respondent is an authorized service provider for the Applicant.

40. The Tribunal finds that, in contravention of sections 11(2)(b) and (c) (i) of the Act, that, –

40.1. The registered name of the First Respondent, "Century 21 Real Property (Pty) Ltd.", is confusingly similar to the Applicant's registered trademark "Century 21".

40.2. The registered name of the first Respondent, falsely implies or suggests, and is likely to mislead individuals into believing that the company is associated with, linked to, or endorsed by the Applicant, or that the first Respondent is an authorized representative or member of the Applicant when that is not the case.

**ORDER**

41. The Tribunal hereby, -

41.1. Orders the First Respondent, in terms of Section 160(3)(b)(ii), to choose a name which does not consist of, or incorporate, the CENTURY 21 trademark, or any other marks which are confusingly and/or deceptively similar to the Applicant's CENTURY 21 or C21 trademarks;

41.2. Directs the first Respondent to file a notice of an amendment of its Memorandum of Incorporation, within thirty (30) days of receipt of this order in order to change its name as

above;

41.3. Exempts the first Respondent from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this order.

41.4. Direct the Second Respondent, in the event that the First Respondent fails to change its name in terms of Section 160(3)(b)(ii) read with Section 14(2) of the Companies Act within 3 months from the date of the order, to change the First Respondent's name to 2023/7"56861/07 (Pty) Limited", as the First Respondent's interim company name on the Register of Companies; and

41.5. Orders the First Respondent to pay the Applicant's costs in terms of Regulation 156 of the Act.

Dated at Johannesburg on this 23rd day of April 2025.

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D Terblanche

Companies Tribunal: Member