



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NUMBER: CT013MAY2019

In the matter of:

TALIS HOLDINGS (PTY) LTD

APPLICANT

and

TALIS CUMS ENTERPRISE (PTY) LTD

RESPONDENT

Coram: PJ Veldhuizen

Date of Hearing: Not Applicable – Default Order

Decision delivered: 5 September 2019

DEFAULT ORDER & REASONS

A. INTRODUCTION

1. THE PARTIES

- 1.1. The Applicant is **TALIS HOLDINGS (PTY) LTD** ("the Applicant"), a private company with registration number 2013/159097/07, duly incorporated and existing under

the company laws of South Africa, with its registered office at 12th Floor Radisson Blue Hotel, Cnr West and Rivonia Street, Sandton, 2128.

- 1.2. The Respondent is **TALIS CUMS ENTERPRISE (PTY) LTD** ("the Respondent"), a private company with registration no. 2018/213870/07, duly incorporated on 22 March 2018, having its registered address at 3358 Simandla Street, Wattville, Ekurhuleni, Benoni, Gauteng, 1501.

B. THE APPLICATION

2. This is an application in terms of Regulation 153(1), read with Regulation 153(2)(b) of the Companies Regulations, for the order as requested in the application made by the Applicant in terms of Section 160 of the Companies Act 71 of 2008 ("the Act"), that the Respondent's company name does not satisfy the requirements of Section 11 of the Act and that Respondent be directed to choose a new name as provided for in Section 160(3)(b)(ii) of the Act.
3. The Applicant has been conducting business in South Africa under the "**TALIS**" name and trade mark since approximately 07 August 2013.
4. The Applicant is an investment holding company with interests in various industry sectors. The Applicant conducts its business under the name, trade mark and trading style "**TALIS**", either through itself or through its various subsidiary companies.
5. The Applicant is the owner of 16 trade marks incorporating the word "**TALIS**".
6. The Applicant alleges further that the "**TALIS**" trade mark (and the reputation and goodwill

thereof) is an asset of considerable commercial value and importance to the Applicant.

7. The Applicant objects to the name of the Respondent, on the basis of their earlier rights in their registered trade mark and on the basis that the Respondent's use of "TALIS" in its name amounts to making unauthorized use of their registered trade mark, and a contravention of Section 11 of the Act.

8. The Applicants seek an Order directing the Respondent to change its name to a name that meets the requirements of the Act.

C. THE LEGISLATION

9. The regulation of disputes concerning the reservation or registration of company names and the jurisdiction of the Tribunal is set out in Section 160 of the Act and the Applicant particularly relies on:

(1) –

A person to whom a notice is delivered in terms of this Act with respect to an application for a reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or 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 the 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.

(2) –

An application in terms of subsection (1) may be made –

(b) 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.

(3) –

After considering an application made in terms of subsection (1), and any submissions by the Applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal –

(a) must make a determination whether that name, or the reservation, registration or use of the name, or the transfer of the reservation or registration of the name, satisfies the requirements of this Act; and

(b) may make an administrative order directing –

(ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the Notice of Amendment contemplated in this paragraph.

10. The restrictive criteria for the names that may be chosen by a company is set out in Section 11 (2) of the Act and the Applicant particularly relies on:

(2) – The name of a company must –

(a) not be the same as –

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

(b) not to 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 the company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company, or 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 trademark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trademark, will mark, or is authorised by the registered owner to use it; or

(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;

D. POINTS FOR DETERMINATION

11. Were the Tribunal's procedural requirements met?

11.1. Applicant is required to establish good cause in terms of section 160(2)(b) as why there has been a delay in bringing this application after becoming aware of the Respondent's registration.

11.2. The evidence before the Tribunal was that the Applicant initially attempted through their attorneys, Messrs Kirch IP to demand that the Respondent change its name before bringing this application. The Respondent failed to heed the demand and the Respondent was then forced to bring this application.

11.3. Accordingly, the Tribunal accepts that the Applicants have satisfied the requirement contemplated in section 160(2)(b).

12. Service / Jurisdiction.

12.1. The Applicant has served the papers in accordance with Act and the Respondent has failed to answer within the required time period.

12.2. The Tribunal enjoys jurisdiction to hear the matter and to grant the relief sought.

E. EVALUATION OF EVIDENCE

13. The Applicant has established a prior right to the name in the light of its prior company registration date and its registered trade marks.

14. The Respondent has been provided an opportunity to be heard and has not filed any papers in this matter.

15. The Tribunal therefore accepts the uncontested version put up by the Applicant and grants the relief as set out in F below.

F. DECISION

16. The Applicant is granted a Default Order in terms of Section 160(3) of the Companies Act 71 of 2008 and Regulation 153 of the Companies Regulations of 2011.

17. The Respondent is directed to change its name to one, which does not incorporate a mark confusingly and/or deceptively similar to the Applicant's **"TALIS"** trade mark.

PJ VELDHUIZEN
MEMBER OF THE COMPANIES TRIBUNAL
CAPE TOWN