



**IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA**

**CASE NO: CT00327ADJ2020**

**DIGITAL BROADCAST HUB (Pty) Ltd.**

**APPLICANT**

**AND**

**JOBURG TV (Pty) Ltd.**

**THE FIRST RESPONDENT**

**CIPC**

**THE SECOND RESPONDENT**

Presiding Member: Dr. M A Chicktay

Date of Decision: 23<sup>rd</sup> November 2020

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**DECISION**

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## **INTRODUCTION**

[1] The Applicant is DIGITAL BROADCAST HUB (Pty) Ltd. A company registered in terms of the company laws of the Republic of South Africa with registration number 2013 / 058643 / 07. The first Respondent is JOBURG TV (Pty) Ltd. A company registered in terms of the company laws of the Republic of South Africa with registration number 2017/129458/07. The second respondent is the Companies and Intellectual Properties Commission (CIPC). Notice has been served on both the first and second respondent through registered post.

### **Applicant's submissions**

- [2] The applicant indicates that its application for the name "Joburgtv" was turned by CIPC as the name had already been reserved by Mr. Keith Leon Oliphant, who has opened a company by the name "JOBURG TV" in 2017
- [3] The applicant is seeking an order for the respondent to change its name as it is in conflict with Section 11(2)(b) and 11 (2)(c) of the Companies Act
- [4] The applicant indicates that the name "JOBURG TV" is identical to the applicants Trade Mark approved in 2014 (CIPC) Trade Mark Number: 2014/03815. A Class 9 Trade Mark registration number 2014/03815
- [5] The applicant contends that COPC erroneously approved and registered "JOBURG TV" in 2014 to Mr. Keith Leon.
- [6] The applicant argues that the "JOBURG TV" is confusingly similar to its trade mark and is likely to confuse the clients that it serves.
- [7] The applicant thus requests that the respondent be ordered to change its name in accordance with section 11(2) (a) (iii) of the Companies Act.

## APPLICABLE LAW

[8] 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**

[9] Section 11 (2) (a) (iii) of the Companies Act requires me to determine whether the name of a company is confusingly similar to a registered Trade Mark. "JOBURG TV" has been registered as a Trade Mark by the applicant since 2014. "Joburgtv" has been registered as a company since 2017. The two names are similar. They both refer to Joburg TV. This could easily confuse members of the public. "Joburg TV" should not have been registered as a company by CIPC as the applicant has already registered similar name with CIPC in 2014.

[10] The second respondent by having a similar name to the Applicants trade mark is in violation of section 11(2) of the Companies Act. Members of the public may be confused in thinking that they are associated with one another.

## **ORDER**

[1] I find in favour of the applicant

[2] 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 Trade Mark.

[3] 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 2 above.

[4] 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 the Second

Respondent, be directed, in terms of Section 160(3) (b) (ii) read with section 14(2) of the Act, to change the First respondent's name to is registered company number being 2017/129458/07as the First Respondent's interim company name on the Companies register.

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

[6] This Determination must be served on the First Respondent and the Registrar of Companies and Intellectual Property Commission.

**MOHAMED ALLI CHICKTAY**  
**MEMBER OF THE COMPANIES TRIBUNAL**