



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT00592ADJ2021

In the matter between:

DIGITAL OXYGEN PROPRIETARY LIMITED

Applicant

and

DIGITALOXYGEN PROPRIETARY LIMITED

Respondent

Issue(s) for determination: This is an application for default order based on an objection to the registration of the company name DigitalOxygen Proprietary Limited in terms of sections 11(2)(a), 11(2)(b) and 160 of the Companies Act, 2008 (Act No. 71 of 2008) read with regulations 13 and 142 of the Companies Regulations, 2011.

Coram: Lindelani Daniel Sikhitha

Date of handing down of decision: 08 July 2021

DECISION (Reasons and Order)

1. INTRODUCTION

[1] The Applicant in this matter is Digital Oxygen Proprietary Limited with registration number: 2013 / 110726 / 07 which is a private company duly incorporated and

registered as such in accordance with the applicable laws of the Republic of South Africa. According to information extracted from the register of companies, the Applicant's registered address is situated at 11 Jacob Street, Elim, Kuils River, Western Cape, Republic of South Africa.

[2] The Respondent in this matter is DigitalOxygen Proprietary Limited with Registration Number: 2019 / 633677 / 07 which is a private company duly incorporated and registered in accordance with the applicable laws of the Republic of South Africa. According to information extracted from the register of companies, the Respondent's registered address is situated at 56 Stanley Road, Brentwood Park, Benoni, Republic of South Africa.

[3] This is a company name objection application ("the Application for Relief") in terms of which the Applicant objects to the registration of the company name of the Respondent, being DigitalOxygen Proprietary Limited, in terms of sections 11(2) and 160(2)(b) of the Companies Act, 2008 (Act No. 71 of 2008) ("the Act") read together with regulations 13 and 142 of the Companies Regulations, 2011 ("the Regulations"). In short, the Applicant contends that the Respondent's name is contrary to the provisions of sections 11(2)(a) and 11(2)(b) of the Act. In this regard, the Applicant contends that the name of the Respondent is the same as or it is confusingly similar to the name of the Applicant.

[4] In this Application for Relief, the Applicant is therefore seeking a determination by the Companies Tribunal in respect of the registration of the company name of the Respondent, being DigitalOxygen Proprietary Limited, by the Commission.

The Respondent was registered by the Commission on the Register of Companies on the 02nd day of January 2020.

- [5] There is a long history regarding the back and forth that the Applicant had to be subjected to while attempting to make a filing of the Application for Relief in this matter. If the system had been working perfectly, the Applicant would have found it smooth and quicker to make its filing. Be that as it may and for purposes of my determination of this matter, I will accept that the Applicant successfully filed the Application for Relief (Form CTR 142) on the 15th day of February 2021. In terms of its Application for Relief, the Applicant is requesting that the Companies Tribunal grants it the relief against the Respondent and ordering that the Respondent must change its name to one which does not incorporate and is not confusingly similar to the Applicant's name.

FORM AND SUBSTANCE OF THE APPLICATION FOR RELIEF IN TERMS OF THE REGULATIONS

- [6] This is an opposed Application for Relief and the Applicant is objecting to the company name of the Respondent in terms of sections 11(2)(a), 11(2)(b) and 160 of the Act read with applicable Regulations. Before I deal with the merits of the current Application for Relief, it is important that I should first deal with some preliminary issues which relates to the form and substance that an application for relief similar to the one filed by the Applicant should comply with in terms of the applicable provisions of the Act and the Regulations.

[7] I should therefore begin such an exercise by first having a look at the provisions of regulation 13(a) of the Regulations. Regulation 13(a) of the Regulations deals with the form that applications for relief of the nature that is similar to the current Application for Relief should comply with. The relevant parts of regulation 13(a) read as follows:

“(a) A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received... a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or has an interest in the name of a company as contemplated in section 160(1)...” [Own emphasis added.]

[8] I can confirm that the Application for Relief in this matter is contained in Form CTR 142. As I would outline herein below, the Applicant does indeed have an interest in the name of the Respondent. I am therefore satisfied that the Application for Relief does comply with the provisions of regulation 13(a) of the Regulations.

[9] In terms of regulation 142(1) of the Regulations, a person may apply to the Companies Tribunal for an order in respect of any matter contemplated in the Act or the Regulations by completing and filing with the Companies Tribunal’s recording officer:

9.1 an Application in Form CTR 142; and

9.2 a supporting affidavit setting out the facts on which the application is based.

- [10] As I have already stated, the Application for Relief is made in Form CTR 142 and signed by the only director of the Applicant. It is also supported by a Sworn Affidavit (“Supporting Affidavit”) deposed to by Andries Stephanus de Kock (“de Kock”) who is the sole director of the Applicant. De Kock is indeed duly authorised and has all the powers to manage and supervise the affairs of the Applicant. These powers include the power to launch the Application for Relief and to depose to the Supporting Affidavit on behalf of the Applicant and he derives them from the provisions of section 66(1) of the Act.¹
- [11] In terms of regulation 142(2) of the Regulations, the Applicant is required to serve a copy of the Application for Relief together with the Support Affidavit and any attachment thereto on each respondent cited in the Application for Relief, within five (5) business days, calculated from the date of filing of the Application for Relief with the Companies Tribunal.
- [12] The Application for Relief was filed with the Companies Tribunal on the 15th day of February 2021. The Applicant proceeded to serve the Application for Relief on the Respondent by email communication on the 18th day of February 2021. The Application for Relief was sent to the email address: info@digitaloxygen.co.za. It is clear that service of the Application for Relief on the Respondent was effected by email within a period of five (5) business days calculated from the date of filing

¹ The relevant provisions of section 66(1) of the Act read as follows:

“Board, directors and prescribed officers:-(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.”

of the Application for Relief with the Companies Tribunal as stipulated in regulation 142(2) of the Regulations.

[13] In terms of regulation 143(1) of the Regulations, any respondent who wishes to oppose the Application for Relief must serve a copy of its answer on the initiating party and file the answer with proof of service thereof with the Companies Tribunal within twenty (20) business days after being served with an application that has been filed with the Companies Tribunal.²

[14] It follows therefore that the Respondent was required to serve a copy of its answer on the Applicant and file its answer together with proof of service on the Applicant with the Companies Tribunal within twenty (20) business days in terms of regulation 143(1) of the Regulations. Upon proper calculation of the time frames in terms of regulation 143(1) of the Regulations the Respondent was required to serve its answer on the Applicant and to file with the Companies Tribunal a copy of its answer to the Application for Relief together with proof of service on the Applicant on or before the 18th day of March 2021.

[15] It appears from the email communication received from the Office of the Registrar of the Companies Tribunal that the Respondent did indeed file its answering affidavit through email communication on the 03rd day of March 2021. The answering affidavit was sent by email to the email address: registry@companiestribunal.org.za. However, the Respondent did not serve

² Regulation 143(1) of the Regulations reads as follows:

“Within 20 business days after being served with a Complaint Referral, or an application, that has been filed with the Tribunal, a respondent who wishes to oppose the complaint or application must–

–
(a) serve a copy of an Answer on the initiating party; and
(b) file the Answer with proof of service.”

the answering affidavit on the Applicant and it is evidently clear that the Respondent was not aware of this procedure. In my view, it was the duty of the Office of the Registrar to guide the Respondent and to ensure that there was service of the answering affidavit on the Applicant. This was not done because no one at the Office of the Registrar knew about its filing until they were alerted by the Respondent.

[16] Be that as it may, it is evidently clear that the filing of the answering affidavit of the Respondent fell through the cracks and same could not be picked up by the Office of the Registrar. As a result the Companies Tribunal proceeded with this matter as if there was no answering affidavit filed with it by the Respondent. As a result, on the 29th day of March 2021, the Applicant proceeded to file the application for default order with the Companies Tribunal in terms of regulation 153(1) of the Regulations. The application for default order was accordingly allocated to me and I started to work on this matter.

[17] On the 29th day of April 2021, the Respondent, through its director, did send the answering affidavit to Nduduzo Molefe of the Companies Tribunal. This prompted the Office of the Registrar of the Companies Tribunal to realize that the Respondent has filed an answering affidavit and this matter should therefore proceed as an opposed matter. The answering affidavit was forwarded to me by the Office of the Registrar with the request for directives regarding the manner that this matter should be proceeded with.

[18] As a result, on 04 May 2021 I handed down judgment dismissing the Application for Default Order. As part of my order I did give the following directions to the Registrar and the parties:

18.1 The Registrar of the Companies Tribunal is hereby directed to set the Application for Relief on the opposed roll.

18.2 The Applicant and the Respondent are hereby directed to file their respective heads of argument at least 5 (five) days prior to the scheduled date of hearing.

[19] In compliance with my directives, the Application for Relief was set down for virtual hearing on the opposed roll on 24 May 2021. The parties also filed their respective heads of argument prior to the aforementioned dated.

FACTS THAT ARE RELEVANT TO THE APPLICATION FOR RELIEF

[20] The issue that had been raised by the Applicant which requires determination by the Companies Tribunal relates to an objection against the registration and duplication of the company name, Digital Oxygen (Pty) Ltd by the Companies and Intellectual Property Commission (“the Commission”). The company name objection has been filed with the Companies Tribunal on 15 February 2021 and it is based on the provisions of sections 11(2)(a) and 11(2)(b) of the Act.

[21] In its Founding Affidavit deposed to by de Kock and the heads of argument prepared for the virtual hearing of 24 May 2021, the Applicant made the following submissions which I consider to be relevant for my determination:

- 21.1 The Applicant was registered by the Commission on the 04th day of July 2013.
- 21.2 The Respondent was registered by the Commission on the 02nd day of January 2020.
- 21.3 The Applicant did not receive any notice from the Commission regarding the registration of the Respondent.
- 21.4 On the 4th day of March 2020 he acquired knowledge about the registration of the Respondent when it was reported to de Kock that there is a company that is registered with the Commission which has the same name as that of the Applicant.
- 21.5 On the 04th day of March 2020, de Kock instructed his son, Jonathan de Kock to look at certain issues regarding the Applicant on the internet. While carrying out the instructions, Jonathan de Kock made the discovery regarding the registration of the Respondent and he reported it to de Kock.
- 21.6 On the same day de Kock did lodge a complaint regarding the issue of duplication of the company name on the Register of Companies with the Commission. The Commission responded and gave him the Reference Number: T578414.
- 21.7 On the 14th day of April 2020, de Kock escalated the complaint to the attention of the Ombudsman of the Commission (“the Ombudsman”). He made a follow up with another email to the Ombudsman on the 05th day of May 2020.

- 21.8 The Ombudsman responded to de Kock's complaint on the 13th day of May 2020 and referred de Kock to Mr. Manyelo and J Mudzwi who works for the Commission.
- 21.9 On the 26th day of May 2020, de Kock received an email communication from Mr. Marvin Baloyi ("Mr. Baloyi") from the Commission giving him an explanation regarding the circumstances which led to the name reservation and ultimate registration of the Respondent by the Commission.
- 21.10 In essence, Mr. Baloyi admitted that the name search system of the Commission could not pick up existence of the name of the Applicant because when doing its name reservation application, the Respondent's agent did not leave any space between the words "Digital" and "Oxygen".
- 21.11 Mr. Baloyi referred de Kock to Mr. Manyelo whom he said will be able to advise better regarding the way forward in dealing with the Applicant's complaint.
- 21.12 Upon receipt of the email communication from Mr. Baloyi, de Kock did send an email communication to Mr. Manyelo requesting advice on the way forward to dealing with the Applicant's complaint.
- 21.13 Mr. Manyelo responded to the email communication from de Kock and advised de Kock to lodge a company name objection dispute with the Companies Tribunal in terms of section 160 of the Act.

21.14 De Kock did follow the advise of Mr. Manyelo and did forward an enquiry to the Office of the Registrar of the Companies Tribunal regarding the Applicant's dispute.

21.15 On the 27th day of May 2020, de Kock did receive an email communication from Mr. Mandla Zibi ("Mr. Zibi") from the Office of the Registrar of the Companies Tribunal stating the following:

"We acknowledge receipt of your email below. Your query below falls within the ambit of the Companies Tribunal. Please visit our website at www.companiestribunal for filling procedure or furnish us with the following documents below to lodge an application with us:

- **CTR142 Form**
- **Affidavit supporting your application and stating the relief sought**
- **CIPC extract records for both companies**

Upon receipt of the above-mentioned documents, we will process your application and give you a case/reference number."

21.16 On the 27th day of May 2020, de Kock did depose a Statement in which he detailed the manner in which he acquired knowledge about registration of the Respondent including the steps which he took upon acquiring such knowledge.

21.17 De Kock also completed Form CTR 142 dated 27 May 2020 in terms of which he sought the following relief from the Companies Tribunal:

“prevent second company to use the name in any way.”

21.18 On 29 May 2020, the Applicant submitted completed Form CTR 142, a Founding Affidavit and the CIPC records (marked Annexures E to G). After a period of silence of over four (4) months from the Companies Tribunal, on the 08th day of October 2020 the Applicant sent an email communication (marked annexure H) to Mr. Zibi requesting for an update. The Applicant received no reply of its email communication from the Companies Tribunal.

21.19 After another three (3) months of waiting, the Applicant did send a follow up email to the Ombudsman on the 05th day of January 2021 (marked annexure I) highlighting the fact that it has now been ten (10) months, without any resolution of the Applicant’s complaint, since the Applicant’s first reported the matter to Ombudsman.

21.20 On the 27th day of January 2021 the Applicant received an email communication (marked annexure J) from the Ombudsman which reads as follows:

“Your correspondence dated 05th January 2021 refers. Please note that the matter must first be referred for resolution to the relevant division within CIPC, the contact details of which are GMoumakwe@cipc.co.za and CKlokow@cipc.co.za.”

21.22 On the 28th day of January 2021 the Applicant sent an email communication to G. Moumakwe and C. Klokow asking whether there is any action required from de Kock or if there is any information the Applicant could provide in order to assist in moving the matter forward?

21.23 On the same day the Applicant received an email from Ms Christa Klokow (marked annexure K) stating the following:

“This is not a CIPC matter, and you are requested to liaise directly with the Companies Tribunal for more information on how to lodge a matter with their office.”

21.24 On the 4th day of February 2021 the Applicant once again sent an email communication (marked annexure L) to Mr. Selby Magwasha (“Mr. Magwasha”) and Mr. Zibi humbly requesting them to find it in their heart and schedule to conclude the matter as soon as possible. The Applicant attached all the relevant documents that have already been sent to the Companies Tribunal on the 28th day of May 2020.

21.25 On the 11th day of February 2021, Mr. Zibi did respond and his response is marked annexure M. In his response Mr. Zibi stated the following:

“We acknowledge receipt of your email below. Please furnish us with the CIPC extract records for all parties involved in order to complete your application.”

21.26 On the 15th day of February 2021, the Applicant submitted all the documents as per request received from Mr. Zibi. These documents are

marked annexures N – Q. On the same day, Mr. Zibi did respond and confirmed the following:

“We acknowledge receipt of the email below. Your case number for future references is CT00592ADJ2021. You are expected to serve the respondent with the whole bundle of documents filed with the Companies Tribunal within five business days and furnish us with proof of service thereof.”

21.27 The Applicant did email the Application for Relief together with the whole bundle of documents to the Respondent on the 18th day of February 2021 as directed by the Companies Tribunal. Mr. Zibi, Mr. Magwasha, Nduduzo Molefe, and Reneilwe Mashile, were also copied on the aforementioned email communication.

21.28 The Applicant did send an email communication requesting for feedback from Mr. Zibi and on the 17th day of March 2021, the Applicant was instructed, by Mr. Nduduzo Molefe, to submit documents lodging an application for default order. The Applicant submitted annexures R – S on the 23rd of March 2021. The instruction that was received from Mr. Molefe read as follows:

“Please find attached CTR145 form. This is the form to state that you are applying for the Tribunal to consider the matter on a default basis. We will need another affidavit accompanying this form and address your concerns as discussed telephonically. We apologise again for the miscommunication and assure you

that we will finalise this matter without any unnecessary delays.”

21.29 The Applicant did indeed comply with the instructions from Mr. Molefe and it filed its Application for Default Order together with supporting documents with the Companies Tribunal on the 29th day of April 2021.

21.30 On the 29th of April 2021, the Applicant received an email communication from Mr. Molefe, stating the following:

“We were contacted by Mr. De Lange this morning enquiring as to the outcome of your matter against his company. We were rather surprised to learn that he had in fact filed a responding affidavit. Please see below emails that he forwarded to us. Unfortunately, his emails went unnoticed, and we processed the matter on a Default basis. Upon realising this mishap, we immediately sent the matter to the presiding officer in the matter and are now also forwarding you Mr De Lange's response. Technically in law, Mr De Lange was supposed to serve you directly and copy us as you had done when you served him with your founding affidavit. But it would appear that his understanding of legal proceedings is rather limited and he obviously did not follow the letter of the law. Nonetheless, we will leave it to the presiding officer to deal with these issues and give us guidance as to what the way forward should be. We shall

revert back to you with an update as soon as there are any developments.”

21.31 The Applicant did send an email communication to Mr. Molefe voicing his objection. The Applicant received feedback from Mr. Molefe on the 29th day of April 2021, stating that the Applicant has:

“... a right to respond to Mr De Lange in an additional affidavit, namely a Replying Affidavit. Please take the matters that you address in this email and put them in an affidavit. Please send us this affidavit tomorrow if possible. We will forward it to the presiding officer for the record and for them to consider that aspect.”

21.32 The Applicant did as was instructed and filed the Replying Affidavit (marked annexure T) dated 30 April 2021. Mr. Molefe confirmed receipt of the Affidavit and requested that the Applicant email a copy of the Replying Affidavit to the Respondent. The Applicant did email the Replying Affidavit to the Respondent on the 03rd day of May 2021.

21.33 On the 05th day of May 2021, the Applicant received an email communication from Mr. Zibi containing the decision by the presiding officer which effectively gave directions to move the matter to an opposed hearing. The email communication from Mr. Zibi was followed by another email communication stating that the date of the hearing is scheduled to take place on the 24th day of May 2021 @ 10:00.

21.34 De Lange also stated that the Applicant and the Respondent are involved in the same market. They both offer services relating to specific app design; hosting for clients' website and they also do product development for them in the IT space.

[22] In its Opposing Affidavit deposed to by Gavin De Lange ("De Lange") and the heads of argument prepared for the hearing which took place on the 24th day of May 2021, the Respondent made the following submissions which I consider to be relevant for my determination:

22.1 De Lange does not have much previous knowledge regarding registration of companies. This is the reason why De Lange had engaged FNB to assist him with the registration of the Respondent.

22.2 The process of registering the Respondent was commenced with during December 2019 and the Respondent was ultimately registered by the Commission on the 02nd day of January 2020.

22.3 On the 02nd day of January 2021, the Respondent did receive Notice COR9.4 (Name Reservation) stating the following which is considered to be important for purposes of determination of the issues involved in this matter:

"This notice is issued in terms of Regulation 9, 10,11 of the Companies Regulations, 2011. In terms of section 12 (3)(b), and 160 of the Companies Act. 2008, any person with an interest in the use of the reserved name, or registered defensive name, as set out in this Notice, may apply to the Companies Tribunal for

an order confirming or varying this Notice in whole or part, or setting aside this Notice and directing the commission to cancel the reservation, or defensive registration, of the name. An application to the Companies Tribunal as discussed above may be made in Form CTR 142 any time within 3 months after the date on which that person received a copy of this Notice, or later with leave of the Tribunal for good cause.”

22.4 On the 18th day of February 2021 De Lange received an e-mail communication from de Kock concerning the duplication of the company name Digital Oxygen. The email communication read as follows:

“Dear Mr De Lange

The attachments in the matter related to your company name are applicable.

I was instructed by the Companies Tribunal to forward the attached documents to you. I have cc’ed various parties at the Tribunal as proof that I had informed you of the situation. Please respond to them directly regarding how you should move forward with the changes you need to make.

Thank you

Regards

Dries de Kock.”

- 22.5 De Lange contends that the name of the Respondent is registered by the Commission on the Register of Companies without a space. The name of the Applicant has a space between the words “Digital” and “Oxygen”.
- 22.6 De Lange alleges that he had no idea at the time of registration of the Respondent that the Applicant had been around. Before he approached the FNB for assistance, he actually had a look online and he looked for websites, for anything on social media and he could not find anything showing the existence of the name.
- 22.7 De Lange’s concerns are explained in the Opposing Affidavit (marked Annexure “I”) and he believes registration of the Respondent’s name by the Commission was an error which could have been avoided. In other words, he contends that the Commission’s name search database should have been set up to easily pick up these things.
- 22.8 De Lange’s main concern is not really the name DIGITALOXYGEN. His main concern is that his company has been trading since its registration and it has therefore built huge client base.
- 22.9 De Lange did not know about the existence of the Applicant’s company name on the Register of Companies. He also sees that de Kock actually found out a few months ago about the registration of the Respondent by the Commission.
- 22.10 In the event that de Kock had reached out to De Lange earlier, De Lange would have wilfully gave up the name to the Applicant.

- 22.11 The Respondent at this point is just as a matter of fact having a large base of clients and so everyone look to the Respondent with regard to the services it is offering and the quality of the services. It has asked its ratings on Hello Peter, and the clients clearly indicated that they look to the Respondent for such services.
- 22.12 In these proceedings, it is clear that the Applicant wants to take the name away from the Respondent and the Applicant is going to get all of those clients of the Respondent. This will affect the business of the Respondent if it has to change its name at this stage.
- 22.13 According to De Lange, the space in between the words “Digital” and “Oxygen” in the name of the Applicant and the merging of the two words in the name of the Respondent does not make much of a difference. The difference depends obviously on the marketing, the logo and the e-mail signature of the Respondent which do not have any space in between the "L" and the "O". In other words, in the name of the Respondent it is only one word, being “Digitaloxygen”.
- 22.14 De Lange conceded that there would be confusion in the market with regard to the similarity of the two company names. Customers will most definitely confuse one company for the other.
- 22.15 De Lange indicated that the Respondent is willing to abide by whatever decision of the Companies Tribunal. Looking at the similarities of the two company names, he is happy to comply with the decision of the

Companies Tribunal even if he is ordered to change the company name of the Respondent.

- 22.16 De Lange considers the Companies Tribunal to possess expertise in the field of company law and to know what it is doing regarding company names. Therefore, the Respondent, has to respect the decision of the Companies Tribunal and comply with its orders.
- 22.17 The Respondent is just asking that if there is an order for the Respondent to change its name or something like that, the Respondent must be given a notice period so that it is able to at least choose a new name and get everything sorted, get its admin sorted, get its clients notified of its new website and get its marketing and everything sorted.
- 22.18 The Respondent has around 70 clients currently hosting their websites with it and these clients must be given notice regarding the changed or new name of the Respondent.
- 22.19 The Respondent will need a period of at least two months to change its name and do all that is referred to in paragraph 22.17 above. The Respondent does not just need to change its name. It must also engage with the social media, change its e-mails, it must let all of its clients know that this is how they are supposed to contact the Respondent and design new invoices format.
- 22.20 The Respondent also has the hosting system and the clients get sent their invoices automatically every month. The server that the clients that are hosting with the Respondent are put on also needs to be changed.

The whole website needs to be changed as well and the Respondent has a support portal where clients can log in, get support and have a chat with it. All of that need to be changed as well.

22.21 De Lange thanked de Kock and requested him to give the Respondent time to change its name and to attend to all the logistical issues which come with the name change.

22.22 De Lange further thanked the Companies Tribunal for its time and expertise. He confirmed that if it decides that it is best for the Respondent to change its name, he would be more than happy to accept such a decision.

THE FINDINGS

[23] It is clear from the papers placed before me and the submissions made during the hearing which took place on the 24th day of May 2021 that the Applicant and Respondent do agree that the names of the Applicant and the Respondent are the same. The Respondent also conceded that the space and no space between the words “Digital” and “Oxygen” do not make any difference. The two names, according to him, look the same and/or are confusingly similar.

[24] I therefore find that the name of the Respondent is the same as the name of the Applicant. The space in between Digital and Oxygen in the name of the Applicant and the merging of the two words into one word in the name of the Respondent does not differentiate the name of the Applicant to be any different from that of

the Respondent. The two names look the same, they are pronounced the same, they are spelled the same and they sound the same if they are read aloud.

THE ORDER

[25] I therefore make the following order:

- 25.1 The objection lodged by the Applicant against the registration of the company name of the Respondent, being DIGITALOXYGEN (Pty) Limited, by the Companies and Intellectual Property Commission is hereby granted.
- 25.2 The Respondent is hereby directed to change its company name to one which does not incorporate the Applicant's name, being "DIGITAL OXYGEN", or any other mark or word that is confusingly and/or deceptively similar to the Applicant's name, within a period of 90 (Ninety) calendar days from date of this order;
- 25.3 The Respondent is ordered to file a notice of an amendment of its Memorandum of Incorporation, within 90 (Ninety) calendar days from date of this order;
- 25.4 The Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment of its Memorandum of Incorporation contemplated in section 160(3)(b)(ii) of the Act.
- 25.5 The Registrar of the Companies Tribunal is hereby directed to serve this judgment on the Companies and Intellectual Property Commission within a period of 5 (FIVE) business days from date of this order; and

25.6 There is no order as to costs.

LINDELANI DANIEL SIKHITHA

Member of the Companies Tribunal

08 July 2021