



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case number: CT01313ADJ2023

IN THE MATTER BETWEEN:

BRIGHTROCK (PTY) LTD.

APPLICANT

Registration number 2011/004232/07

and

BRIGHTROCK INVESTMENTS (PTY) LTD.

FIRST RESPONDENT

Registration number 2021/966734/07

**THE COMMISSIONER OF THE COMPANIES
AND INTELLECTUAL PROPERTY COMMISSION
(CIPC)**

SECOND RESPONDENT

Presiding Member of the Companies Tribunal: D Terblanche

Date of Decision: 20 June 2023

Decision (Reasons and order)

THE PARTIES

1. The Applicant is Brightrock (Pty) Ltd. (the “Applicant” or “Brightrock”), a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with registration number 2011/004232/07 and having its registered place of business

recorded as 165 West Street, Corner Sandown Valley Crescent, Sandton, Gauteng, 2146.

2. The First Respondent is Brightrock Investments (Pty) Ltd. (the “First Respondent” or “Brightrock Investments”), a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with registration number 2021/966734/07 and having as its registered address at 30 Bosman Street, Wolmaransstad, North West, 2630.
3. The Second Respondent is the Commissioner of the Companies and Intellectual Property Commission (the “Second Respondent” or the “Commission” or the “CIPC”) appointed in terms of Section 189 of the Companies Act 71 of 2008 (the CA or the Act). The Applicant cites the Commissioner in his official capacity as the person responsible for the function of the Commission in terms of that Act.

THE APPLICATION

4. The Applicant applied, relying on Section 160 of the CA, for a default order in this matter from the Companies Tribunal ("the Tribunal") confirming that the First Respondent’s name Brightrock Investments (Pty) Ltd., does not satisfy the requirements of the CA and directing the First Respondent to choose a new name as provided for in section 160(3)(b)(ii) of the CA.
5. The Applicant filed a notice of motion in the required form CTR145 with the accompanying supporting affidavit setting out the facts on which the Applicant relies for the default order.
6. Gaelyn Clare Scott, an attorney practising as a Director at Edward Nathan Sonnenbergs Inc (ENSafrica) to, the Applicant’s attorneys, deposed to the affidavit in support of the default application.
7. Regulation 153(1) empowers the CT to issue default orders in instances where a person or

¹ Regulation 153 provides that –
“(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.”

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(1).

8. In considering whether the Tribunal may grant the Applicant the relief it seeks, the Tribunal must first determine whether the application is procedurally in order, in that the Applicant adhered to the relevant timeframes, prescribed forms, and procedures.
9. Once I have determined the preliminary procedural aspects of the application, I will consider the substantive issues, namely, “... *whether the name, or the reservation, registration or use of the name, ... satisfies the requirements of this Act.*”²

PRELIMINARY MATTERS

10. As a point of departure, I will consider the default application and the submissions made by the Applicant, in the light of the provisions of the CA and the applicable Regulations.
11. Regulation 13(a) of the Regulations provides -

“(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)...”

(Emphasis added).

12. According to the Applicant it filed a Company Name Objection against the name Brightrock Investments (Pty) Ltd., on 15 March 2023, on the Form CTR 142 as prescribed by Regulation 142(1)(a) of the CA, together with a supporting affidavit deposed by Glenn Kenneth Hickling, Head of the Legal Department and Company Secretary of the Applicant, as required by Regulation 142(1)(b) of the Companies Act. I have perused the Resolution and am satisfied that the deponent is duly authorised.
13. The Tribunal issued the date stamped CTR 142 form on 5 April 2023.

² See section 160(1) of the CA.

14. In terms of Regulation 142(2) of the CA the Applicant had to serve the application on the First and the Second Respondents within five (5) days of filing it with the Tribunal. If calculated from 5 April 2023 (the date the Tribunal stamped on the CTR 142 form), the Applicant had to serve the application on the respondents by no later than 14 April 2023.
15. According to the Applicant it served the Application and the supporting documents on the First Respondent *via* email, within the 5 (five) business days of filing it with the Tribunal, as required by Regulation 142(2). This appears from a copy of the email the Applicant's attorneys sent with the application and supporting documentation to the First Respondent at 09:04 on 23 March 2023. The delivery receipt is dated 23 March 2023.
16. In terms of Regulation 153 (1) read with Regulation 143(1) of the Companies Act, the First Respondent had twenty (20) business days to respond to the application, failing which Regulation 153(1) entitles the Applicant to apply for a default judgment order.
17. The First Respondent had to serve its reply on the Applicant by no later than 9 May 2023 (calculated from 5 April 2023 - the date the Tribunal stamped the CTR 142 form). ENSafrica enquired from the Tribunal on 31 May 2023 whether the First Respondent had filed its answering affidavit. The Tribunal responded to ENSafrica on 1 June 2023, advising that it did not receive the First Respondent's answering affidavit. The Applicant submitted that it had not receive an answering affidavit in response to the application from the First Respondent to date.
18. The Applicant had to also serve the application and supporting affidavit on the Second Respondent, the Second Respondent being one of the Respondents named in the application, within the prescribed five (5) business days after filing the Form CTR 142³, and moreover since the Applicant seeks an order for relief against the Second Respondent.
19. The relief the Applicant seeks against the Second Respondent, is for this Tribunal to,

³ Regulation 142(2) provides that "the applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days of filing it." (My underlining); and Regulation 153(1) provides that "If a person served with an initiating document has not filed a respond se within the prescribed period, the initiating party may apply to g have the order as applied for issued against that person by the Tribunal."

“...in the event that the First Respondent fails to comply with an order by the Tribunal to change its name to a name that does not incorporate the tare mark Brightrock, within 3 months from the date of the Tribunal’s order, directing the second Respondent, in terms of section 160(3)(b)(ii) read with section 142 of the Companies Act, to change the First Respondents name to K2021/966734/07(Pty)Ltd., as the First Respondent's interim company name on the companies register.”

20. In the light of the Applicant seeking relief against the Second Respondent, the Applicant had to serve the application on the Second Respondent as set out in Table CR 3, either -
 - 20.1. By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Commission, if the document is a prescribed form; or
 - 20.2. By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or
 - 20.3. By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or
 - 20.4. By handing the document, or a computer disk containing the document in electronic form, to the Commission, or a responsible employee who is apparently in charge of the Commission's office.
21. The Applicant has not made any submissions, nor placed any evidence before the Tribunal that it had affected service of the application and supporting documentation on the Second Respondent, as required in terms of Regulation 142(2) of the CA.
22. The CA and the Regulations empower 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 153(1).
23. In this case the Second Respondent was not served with an initiating document to oppose the relief the Applicant seeks against it, had it so wished, within the prescribed 20 (twenty) days.

24. I am satisfied that the Applicant's met the procedural requirements of the main and default applications in respect of the First Respondent.
25. I am not satisfied that the Applicant has not made out a case for the main application to be considered on a default basis against the Second Respondent.

BACKGROUND

26. The Applicant became aware of the First Respondent's registration during June 2022.
27. Upon learning of the existence of the First Respondent, the Applicant instructed ENSafrica to address a letter of demand to the First Respondent setting out the Applicant's trade mark rights and requesting that the First Respondent voluntarily change its company name to one not incorporating or confusingly similar to the Applicant's BRIGHTROCK trade mark.
28. On 19 July 2022 the First Respondent's attorneys, in response to the above letter of demand dated 4 July 2022, noted that they did not understand how the CIPC could approve the name Brightrock Investments (Pty) Ltd. when the company name of the Applicant, Brightrock (Pty) Ltd, was already on the Companies Register. The First Respondent's attorneys noted that the First Respondent is a "diamond digging business" and "is not involved in financial or insurance or related services". The First Respondent's attorneys also requested further particulars of the Applicant's trade mark rights and company registration number.
29. ENSafrica responded via email on 17 August 2022, noting that the Companies and Intellectual Properties Commission does not run a cross-check of the Trade Marks Register when an application is made to register a company name, and that the onus lies on the applicant for the company name to check the Trade Marks Register in order to determine whether a third party's trade mark rights will be infringed through the use of the proposed company name. ENSafrica also provided the Applicant's company registration number and requested clarity as to what further particulars the First Respondent required in respect of the Applicant's trade mark rights, noting that the Applicant's BRIGHTROCK

trade mark rights in South Africa date back to 2011 in respect of financial services. ENSafrica also requested that the First Respondent provide a substantive response to its letter dated 4 July 2022.

30. On 19 August 2022, ENSafrica received a letter *via* email from the First Respondent's attorneys, advising that they were taking the First Respondent's instructions. On 30 August 2022, having still not heard from the First Respondent's attorneys, ENSafrica sent an email to the First Respondent's attorneys informing them that ENSafrica would take the Applicant's further instructions.
31. On 31 August 2022, ENSafrica received a letter *via* email from the First Respondent's attorneys, advising that the First Respondent would change its company name and that "the auditor will proceed to do it".
32. On 1 September 2022, ENSafrica emailed the First Respondent's attorneys an undertaking to be signed by the First Respondent, confirming its agreement to change its company name and to send proof of the name change, in settlement of this matter. The First Respondent's attorneys did not respond to this email. On 21 September 2022, ENSafrica sent a **follow-up** email to the First Respondent's attorneys, requesting the signed undertaking. The First Respondent's attorneys responded *via* email on 21 September 2022, advising that they would refer the undertaking to the First Respondent. On 19 October 2022, having still not received the signed undertaking from the First Respondent, ENSafrica sent another email to the First Respondent's attorneys, noting that the First Respondent had not yet changed its company name and, as such, ENSafrica was taking the Applicant's further instructions.
33. On 19 October 2022, the First Respondent's attorneys emailed ENSafrica and advised that they would make the necessary inquiries with the First Respondent regarding the undertaking. On 29 November 2022, having still not received the signed undertaking from the First Respondent, ENSafrica sent another email to the First Respondent's attorneys, requesting the signed undertaking and proof of that the First Respondent had changed its company name. The First Respondent's attorneys did not respond to this email. On 17 January 2023, ENSafrica sent a final email to the First Respondent's attorneys, noting that

the First Respondent still had not changed its company name and, as such, ENSafrica was taking the Applicant's further instructions.

34. The Applicant has since diligently pursued this matter, at all times unequivocally stating its intention to pursue a formal name objection against the First Respondent if it failed to voluntarily change its company name.
35. On 16 February 2023, ENSafrica advised the Applicant to file a formal company name objection against the First Respondent, as it was evident that the Applicant had no alternative but to proceed with the application for relief and this default application, given the First Respondent's lack of cooperation in providing the signed undertaking and changing its company name, as it had previously agreed to do, and considering the importance of this matter to the Applicant.

THE APPLICANT'S SUBMISSIONS

36. The Applicant has an interest in the name of the First Respondent in terms of Section 160(1) of the Act because the First Respondent's name is confusingly and/or deceptively similar to, the Applicant's distinctive and well-known BRIGHTROCK trade mark, in which the Applicant has a major and direct commercial interest.
37. The Applicant is the proprietor in South Africa of the below trade marks incorporating or comprising BRIGHTROCK ("the BRIGHTROCK trade marks"):

No.	Trade mark	Class	Status
2011/07611	BRIGHTROCK	36	Registered
2011/17815	BRIGHTROCK <i>Logo</i>	36	Registered
2012/09450	BRIGHTROCK FLINT	36	<u>Registered</u>
2013/04171	BRIGHTROCKZA	36	Registered
2019/23751	BRIGHTROCK Logo (colour)	36	Pending

38. The Applicant's earliest statutory rights arising from the outlined registrations predate

the date of incorporation of the First Respondent by 10 years.

39. The Applicant was established during 2011 with the aim of creating a new type of life insurance that would give clients and financial advisers the tools to co-create a solution that precisely meets their individual needs. The Applicant's needs-matched insurance is the First of its kind life insurance product designed to dynamically change with the policy holder as his or her life and needs change.
40. The Applicant has good cause to make this application based on its extensive statutory and common law trade mark rights in its BRIGHTROCK trade mark, the earliest registered trade mark rights dating back to 2011, and as such has acquired a substantial and favourable reputation, with accompanying goodwill. In addition, the Applicant's BRIGHTROCK trade mark is well-known and qualifies for protection as a well-known trade mark in terms of Sections 34(1)(c) of the Trade Marks Act 194 of 1993.
41. As stated in paragraphs 7.7 and 7.8 of the Applicant's founding affidavit, the First Respondent's company name, Brightrock Investments (Pty) Ltd, wholly incorporates the Applicant's well-known and distinctive BRIGHTROCK trade mark as the dominant and memorable feature. The word "Investments" is merely descriptive and does not serve to distinguish the First Respondent's name from the Applicant's trade mark. In fact, the inclusion of the word "Investments" in the First Respondent's company name is likely to exacerbate consumer confusion, given that the Applicant's BRIGHTROCK trade mark is registered and used in respect of financial and insurance services. The First Respondent's company name is, therefore, undoubtedly confusingly and/or deceptively similar to the Applicant's well-known and distinctive BRIGHTROCK trade mark.
42. There is, therefore, a strong likelihood that members of the public may be confused or deceived into believing that the First Respondent's company is in some way related to, or affiliated with, the Applicant as its company name is confusingly and/or deceptively similar to the Applicant's trade mark BRIGHTROCK.
43. I submit that the First Respondent's name will reasonably mislead a person to believe, incorrectly, that the First Respondent is part of, or associated with, the Applicant's

business, when this is not the case. The First Respondent's name does not, therefore, comply with Sections 11(2)(a) or (b) and (c) and is liable to an order in terms of Section 160(3)(b) of the Act.

44. Further, as the BRIGHTROCK trade mark undoubtedly qualifies for protection as a well-known trade mark, I am advised that any unauthorized use of a trade mark which is identical or similar to it so as to be likely to *take unfair advantage* of, or be detrimental to, the distinctive character or the repute of the BRIGHTROCK trade mark, will amount to trade mark infringement in terms of Section 34(1)(c) of the Trade Marks Act, notwithstanding the absence of confusion or deception. Such unauthorized use by the First Respondent will, therefore, result in the dilution of the well-known BRIGHTROCK trade mark.
45. In these circumstances, in terms of Regulation 153 of the Act, the Applicant hereby requests that an order be granted against the First Respondent as prayed for in the founding affidavit accompanying the CTR 142 form.

THE SUBSTANTIVE ISSUE FOR CONSIDERATION

46. The substantive question for consideration is whether the First Respondent's name satisfies the requirements of the CA, more specifically Sections 11(2)(a)(i), 11(2)(a)(iii), 11(2)(b)(i), 11(2)(b)(iii) and 11(2)(c)(i) of the Companies Act.

ANALYSIS AND EVALUATION

47. The relevant provisions of section 160 of the CA relating to the application above provide as follows –

Section 160(1) provides that -

“(A person to whom a notice is delivered in terms of this Act with respect to an application for 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 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.”

(Emphasis added)

Section 160(2) provides that -

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

(a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or

(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.”

48. The "Directives of the Registrar of Companies and Close Corporations on Applications for the Reservation of names of Companies, Close Corporations and Defensive Names", Practice Note No. 1 of 2008, published by the Registrar of Companies in Government Gazette No. 30687 dated 25 January 2008, reads:

"Any name may be allowed, provided that it does not prejudice the existing rights of any person, or that such name is, in the opinion of the Registrar, undesirable. "

In particular, a name will be regarded as undesirable if:

"Words pertaining to a trade mark are contained in a name, if such name will be used in the course of trade in class of goods or services in which the trade mark is registered, unless the applicant has appropriate rights to the use of such a trade mark".

49. Section 160(1) of the Companies Act 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."

50. Section 160(2)(b) of the Companies Act 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."

51. Sections 11(2)(a)(i) and (iii), 11(2) (b) (i); 11(2) (b) (iii), and 11(2) (c) of the Companies Act, as far as they are applicable, read as follows:

"(2) The name of a company must-

(a) not be the same as –

(i) the name of another company, domesticated company, registered external company, close corporation or cooperative.

(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) ...

(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...*

(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..."*

52. In my view there is no contravention of section 11(2)(a) (i) of the Companies Act, as clearly the First Respondent's name and the Applicant's Brightrock trade mark are not the same as envisaged in the section.

53. The next question is whether the First Respondent's name and the Applicant's Brightrock trade mark are confusingly similar as envisaged in section 11(2)(b)(ii) read with section 11(2)(iii) of the Companies Act?

54. I agree with the Applicant that there is a reasonable likelihood that the public might be confused into believing that they are dealing with the Applicant when they are in fact dealing with the First Respondent, particularly considering that they may not see the First Respondent's name and the Applicant's trade mark side-by-side.⁴

55. The visual, phonetic, and conceptual similarities between the First Respondent's name and the Applicant's 'Brightrock' trade mark may mislead or confuse others into believing that there is some authorised connection and / or association in the course of trade between the products and/or services offered by the First Respondent with those of the Applicant, when, from the evidence before me, that is not the case.

56. *In Century City Apartments Property Services CC and Another v Century City Property*

⁴ *American Chewing Products Corporation vs American Chicle Co-operation 1948 (2) SA 736/A* (also mentioned In *GAP (Pty) Ltd v The Corporate Gap (Pty) Ltd [CT012MAR2019]*):

Owners' Association 2010 (3) SA 1 (SCA), that court found that though “CENTURY CITY” and “CENTURY CITY APARTMENTS” are not identical (the same), the name “CENTURY CITY APARTMENTS” was confusingly similar to “CENTURY CITY”.

57. In *Plascon-Evans Paints (TVL) Ltd. v Van Riebeeck Paints (Pty) Ltd.*⁵ (“Plascon-Evans”), CORBETT JA quoted MARGO J, delivering the judgment in *International Power Marketing (Pty) Ltd v Searles Industrials (Pty) Ltd.* 1983(4) SA 163 (T), as follows on the meaning of the words “as to be likely to deceive or cause confusion” –

“The main legal principles relevant to the decision of the instant case may be briefly summarized as follows –

In an infringement action the onus is on the plaintiff to show the probability or likelihood of deception or confusion. ... it is enough for the plaintiff to show that a substantial number of persons will probably be confused as to the origin of the goods or the existence or non-existence of such a connection. ... The comparison must be made with reference to the sense, sound and appearance of the marks. The marks must be viewed as they would be encountered in the market place and against the background of relevant surrounding circumstances. The marks must not only be considered side by side, but also separately. It must be borne in mind that the ordinary purchaser may encounter goods, bearing the defendant's mark, with an imperfect recollection of the registered mark and due allowance must be made for this. If each of the marks contains a main or dominant feature or idea the likely impact made by this on the mind of the customer must be taken into account. As it has been put, marks are remembered rather by general impressions or by some significant or striking feature than by a photographic recollection of the whole. And finally consideration must be given to the manner in which the marks are likely to be employed as for example, the use of name marks in conjunction with a generic description of the goods.” (My underlining.)

⁵ (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984)

58. CORBETT JA: stated further at paragraph 47 in *Plascon Evans* “... in my view, a purely verbal comparison is not enough. As I have said, in cases such as this the Court must transport itself to the market place and try to visualize how customers of the goods, in relation to which the marks are used, would react.” (My underlining.)
59. As CORBETT JA emphasized (see above), the comparison must not be confined to a viewing of the marks side by side, but “I must notionally transport myself to the market place (see remarks of COLMAN J in *Laboratoire LaCharte SA v Armour-Dial Incorporated*, 1976 (2) SA 744 (T), at page 746 D) and consider whether the average customer is likely to be deceived or confused. And here I must take into account relevant surrounding circumstances, such as the way in which the goods to which the marks are applied are marketed, the types of customer who would be likely to purchase the goods, matters of common knowledge in the trade and the knowledge which such purchasers would have of the goods in question and the marks applied to them.?”
60. Considering the conspectus of cases cited above and the guidance from those cases, I cannot but conclude that the First Respondent’s name runs counter the provisions of section 11(2)(b)(i) and (iii) read with section 11(2)(a) (iii) of the Companies Act.
61. I noted the assertions by the attorneys for the First Respondent that the First Respondent is a “diamond digging business” and “is not involved in financial or insurance or related services”, no doubt inviting an inference that since the parties operate in separate and distinct markets, it potentially reduces the confusion between the First Respondent’s name and the Applicant’s trade mark.
62. In my view whatever gains the above presents that is almost completely offset by the inclusion of the word "Investments" in the First Respondent's company name, which is likely to exacerbate consumer confusion, given that the Applicant's BRIGHTROCK trade mark is registered and used in respect of financial and insurance services.
63. The Applicant has no control over the First Respondent’s future business ventures. The First Respondent might decide to venture into the Applicant’s areas of business, moreover since the First Respondent already included the word "Investments" in the First Respondent's company name. That might very well elevate the risks of confusion

between the Applicant's trade mark and the First Respondent's name, products and services in the marketplace.

64. I find that the Applicant has shown good cause to bring this application under section 160(2) of the CA.
65. I find that the name of the First Respondent, **BRIGHTROCK INVESTMENTS (PTY) LTD**, with registration number 2021/966734/07, to be so confusingly similar to the Applicant's trade mark so as to falsely imply or suggest or be such as would reasonably mislead a person to believe incorrectly, that the company is part of, or associated with, any other person or entity, in contravention of section 11(2)(c) of the Companies Act.
66. I accordingly find that the First Respondent's name **BRIGHTROCK INVESTMENTS (PTY) LTD** with registration number 2021/966734/07, does not satisfy the requirements of Section 11 of the Act.

CONSIDERATION OF THE ORDERS SOUGHT

67. I grant the order the Applicant sought in terms of section 160 of the Act, namely, that the First Respondent's name **BRIGHTROCK INVESTMENTS (PTY) LTD** with registration number 2021/966734/07, does not satisfy the requirements of Section 11 of the Act.
68. Regarding the further orders the Applicant seeks, the Applicant prays that –
 - 68.1. The Tribunal directs the First Respondent to change its name to one which does not incorporate **BRIGHTROCK**, and which is *not confusingly* and / or deceptively similar to the trade mark **BRIGHTROCK**;
 - 68.2. In the event that the First Respondent fails to comply with the order set out in paragraph 68.1 above within 3 months from the date of the order, the Tribunal directs the Second Respondent, in terms of Section 160(3)(b)(ii) read with Section 142 of the Act, to change the name of the First Respondent to "K2021/966734/07

(Pty) Ltd”, as the First Respondent's interim company name on the Companies Register;

68.3. The Tribunal grants the costs of this Application in favour of the Applicant, as the Applicant took all reasonable steps to resolve this matter amicably and to avoid lodging a company name objection; and

68.4. The Tribunal grants the Applicant further and/or alternative relief.

Change of name

69. Section 160(3) of the CA prescribes the orders the CT may grant after making a determination on an application in terms of section 160 of the CA. It provides that the CT may make an administrative order directing –

“(3)(b)(i) ... the Commission to—

(aa) reserve a contested name, or register a particular defensive name that had been contested, to the applicant;

(bb) register a name or amended name that had been contested as the name of the company;

(cc) cancel the reservation of a name, or the registration of a defensive name; or (dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or

“(3)(b)(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.”

70. The Tribunal has further previously illustrated circumstances where an infringing name cannot be left on the Companies Register in *Joest GMBH+CO.KG and Joest Electrical*

and Airconditioning (Pty) Ltd under case number CT010MAY2017, by making reference to *Polaris Capital (Pty) Ltd v The Registrar of Companies and Polaris Capital Management Inc* (case no 11607/2005) at paragraph 5.8 on page 9, in which it was decided that:

"It is submitted that by allowing the close corporation's name to remain on the register, in addition to causing deception and confusion, its registration will hinder the registrar's role in maintaining and promoting good governance and administration of corporate entities in the interest of the general public".

71. In this regard, allowing the First Respondent's company name to remain on the Companies Register, unrestricted, bearing in mind that at any time it could venture into the market of the Applicant, would be damaging to the Applicant's trade marks, goodwill and reputation. This would also go against the Registrar of Companies' role in maintaining and promoting good governance and administration of corporate entities in the interest of the general public, mentioned above.

Costs

72. The Applicant seeks a costs order against the First Respondent, arguing that the Applicant took all reasonable steps to resolve this matter amicably without having to lodge this application.
73. I am not inclined to make a costs order in this matter, albeit the Applicant incurred costs in bringing the application, as the First Respondent did not oppose this application.

Directing the Second Respondent, the Commissioner of Companies, if the First Respondent fails to comply with the order set out above within three (3) months, to record the First Respondent's registration number followed by "(Pty) Ltd.", as the First Respondent's interim company name on the companies register.

74. The request that the second Respondent be directed to substitute the First Respondent's registration number for its name, cannot be entertained due to the absence of proof of

service of the application on the second Respondent.

75. The CA and the Regulations empower 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 153(1) read with Regulation 142(2).
76. In this case the second Respondent was not served with an initiating document to oppose the relief the Applicant seeks against it, had it wished to do so, within the prescribed 20 (twenty) days.
77. The Tribunal considered the Applicant's prayer for further and / or alternative relief.
78. In this regard the Tribunal considered the possible costs the First Respondent might have to incur to give effect to its order and made an order to off-set the First Respondent's financial outlay for the implement the Tribunal's order. See below.

ORDER

79. Having considered the Applicant's application, the orders the Applicant seek, and the orders the CT may grant, the Tribunal hereby:

79.1. Grants the default application.

79.2. Directs the First Respondent to change its name to one which does not incorporate and is not confusingly and or deceptively similar to Applicant's 'Brightrock' trade mark. It must not include the name 'Brightrock', or a name phonetically identical to the word 'Brightrock ' in the new name.

79.3. Directs the First Respondent to file a notice of an amendment of its Memorandum of Incorporation, within sixty (60) days of receipt of this order in order to change its name as per paragraph 79.2 above.

79.4. Exempts the First Respondent from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.

79.5. Instructs the Registrar of the Companies Tribunal to bring this ruling to the attention of the First and the second Respondents.

DATED AT JOHANNESBURG THIS 20th DAY OF JUNE 2023.

MS D R TERBLANCHE
MEMBER OF THE COMPANIES TRIBUNAL