



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case number: CT01447ADJ2023

In the matter between:

JEAN EDWARDS CONSULTING LIMITED

1st Applicant

(Registration number 08488479)

JEAN EDWARDS CONSULTING (PTY) LTD.

2nd Applicant

(Registration number 2022/397421/07)

AND

J E CONSULTING SOUTH AFRICA (PTY) LTD.

1st Respondent

(Registration number 2021/549160/07)

MRS. LEGAKWA MAJOZI

2nd Respondent

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

3rd Respondent

Presiding Member of the Companies Tribunal: D Terblanche

Date of Decision: 17th day of October 2023

DECISION (Reasons and Order)

THE PARTIES

1. The Applicant is JEAN EDWARDS CONSULTING LIMITED (the 1st Applicant), registration number 08488479, a limited liability private company incorporated in terms of the laws of the United Kingdom.
2. The 2nd Applicant is JEAN EDWARDS CONSULTING (PTY) LTD. (the 2nd Applicant), registration number 2022/397421/07, a limited liability private company incorporated in terms of the laws of the Republic of South Africa.
3. The 1st Respondent is JE CONSULTING SA (PTY) LTD. (the 1st Respondent), registration number 2021/549160/07, a limited liability private company incorporated in terms of the laws of the Republic of South Africa, with its principal place of business at 9 Sunbird Close, Meyersdal, Alberton, 1448.
4. The 2nd Respondent is MRS. LEGAKWA CATHRINE MAJOZI (the 2nd Respondent), an adult female with full legal capacity, cited herein in her capacity as a director and majority shareholder of the 1st Respondent, and whose address is 9 Sunbird Close, Meyersdal, Alberton, 1448.
5. The 3rd Respondent is THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (the CIPC), cited in its official capacity as custodian of the companies register, a juristic entity established in terms of section 185 of the Companies Act 71 of 2008 (the Companies Act or the CA), and whose address is the DTIC Campus, 7 Meintjies Street, Sunnyside, Pretoria, 0001.

THE APPLICATION

6. This is a default application brought in terms of Section 160 of the CA for a determination whether the 1st Respondent's name JE CONSULTING SA (PTY) LTD complies with the requirements of section 11 of the CA, and for an order from the Companies Tribunal (the CT or the Tribunal) –
 - 6.1. declaring that the 1st Respondent's name does not comply with sections 11(2)(b) and 11(2)(c)(i) of the Companies Act;
 - 6.2. directing the 1st Respondent, in terms of section 160(3)(b)(ii) of the Companies Act, to change its name to one which does not consist of, or incorporate, the trade mark and or
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words "JE Consulting", or any other mark which is confusingly and/or deceptively similar to the 1st Applicant's "JE Consulting" trademark; and

6.3. authorising and directing the 3rd Respondent to change the name of the 1st Respondent to its original name "Ivolv IT Solutions" or any other name of its choice, or alternatively its registration number, in the event of the 1st Respondent not complying with paragraph 6.2 above within 10 (ten) days from the date of the Tribunal ordering the 1st Respondent to act in accordance with the aforesaid paragraph above.

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

7.1. *“(1) 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)

7.2. 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.”

(Emphasis added)

8. Regulation 153(1) empowers the CT 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 20-day period prescribed in Regulation 143(1).

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.”

9. In considering whether the Tribunal may grant the Applicant the relief it seeks by default, the Tribunal must determine whether the application is in order procedurally, and that the Applicant adhered to the relevant timeframes, prescribed forms, and procedures.
10. Once I have determined the 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

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

(Emphasis added).
13. According to the Applicant it filed a Company Name Objection, on the Form CTR 142 as prescribed by Regulation 142(1)(a) of the CA, together with an affidavit in support of the application, deposed by Alain Patrice Emmanuel Dunyaglo (Dunyaglo), employed by the 1st and 2nd Applicants (together the Applicants) and a Director of the 1st Respondent, on behalf of the Applicants.
14. The Tribunal’s date stamp appears on the face of Form CTR 142, reflecting the filing date as 24 July 2023.
15. The Applicants' Board of Directors duly authorised Dunyaglo to represent the Applicants in this matter before the Tribunal by issuing resolutions to that effect. I have perused the resolutions and I am satisfied that the Applicants duly authorised the deponent.

² See section 160(1) of the CA.

16. In terms of Regulation 142(2) of the Regulations under the Companies Act the Applicant had to serve the application on the Respondents within five (5) days of filing it with the Tribunal, i.e., by no later than 31 July 2023.
17. The Applicant submitted that it served the application on the Respondents on the 24th of July 2023. The 3rd Respondent acknowledged receipt of service of the application *via* email.
18. In terms of Regulation 153(1) read with Regulation 143(1) of the Companies Act, the Respondents had twenty (20) business days to respond, failing which the Applicant is entitled to apply for a default judgment order as provided for in Regulation 153(1).
19. The Respondents had to serve its response (answer) on the Applicants by no later than 21 August 2023. The Applicant submitted that the Respondents have not filed answering affidavits in response to the application.
20. Having considered whether the application meets the requirements of Regulation 153 read with Regulation 143 of the Regulations, I am satisfied that the Applicant has made out a case for the main application to be considered on a default basis against the Respondents.

BACKGROUND

21. The background information detailed below appears from Dunyaglo's uncontroverted affidavit in support of the application.
22. Since 2005, the 1st Applicant, Jean Edwards Consulting Limited (JE Consulting) has been providing the highest quality Information Technology, Strategy and Management Consultancy services to the finance industry and the public sector.
23. The 1st Applicant has built a very successful and reputable brand around its service offering and over the years our consultants have worked for clients such:
 - 23.1. Banking: Credit Suisse, Mizuho, HSBC, ABN Amro;
 - 23.2. Insurance: Allianz, Axis Capital, Vibe Syndicate Management, Bryte;
 - 23.3. Reinsurance: Sirius International, Renaissance Re, Berlina Re, Hamilton Re, Continental Re;

- 23.4. Pharma: Roche
- 23.5. Consultancy partners: KPMG, Deloitte, Accenture;
- 23.6. Public sector: United Kingdom's Department for International Development, Brighton and Hove City Council;
- 23.7. Non-Profit Organizations: TransAid.
24. The 1st Applicant's business has been built on the principles of professionalism, ethical conduct, quality of service, and delivering value to clients.
25. The 1st Applicant's presently has offices in the United Kingdom, United States of America, Switzerland, Latvia, Nigeria.
26. The 1st Applicant took a decision to expand its footprint in Africa by establishing a South African office. To this end the 1st Applicant appointed its Chief Executive Office and co-founder, Mr. Edward Nnadi (Nnadi) and the Deponent, Dunyaglo, to spearhead the establishment of an office in Johannesburg; mandated them to register a couple of companies and to make investments in or enter into partnerships with local entities if such investments or partnerships with local entities were deemed conducive in the establishment of the 1st Applicant's business in South Africa. In this context the business relationship between the Applicants and the 1st and 2nd Respondents was established.
27. In accordance with its business expansion plans, the 1st Applicant registered a company, the 2nd Applicant, with the CIPC under the name and style of Jean Edwards Consulting Proprietary Limited in March 2022, with registration number 2022/397421/07.
28. Nnadi and Dunyaglo met the 2nd Respondent for the first time shortly after their arrival in July 2022. The 2nd Respondent offered to *"assist us in any way she could, because although she acquired South African citizenship and her Botswanan roots meant she had a connection with foreign nationals in this country"* assuring them on numerous occasions that, *"she had no interest other than helping her fellow brothers."*
29. By the time Nnadi and Dunyaglo undertook the journey to South Africa in July 2022 for the Applicants' business expansion initiatives above, and subsequently met the 2nd Respondent,
30. The 2nd Respondent suggested that, instead of the Applicants registering another entity with the CIPC, we use her already existing but non-operational shelf company Ivolv IT Solutions
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Proprietary Limited (Ivolv), registration number 2021/549160/07 (the "2nd Respondent"), which in the 2nd Respondent's own words, "*was not trading or offering services to any external parties*".

31. The Applicants agreed to the 2nd Respondent's suggested approach. They then entered into a business joint venture partnership with the 2nd Respondent in terms of which:
 - 31.1. The 2nd Respondent would lodge a name change application, on behalf of the 1st Respondent, with the 3rd Respondent to change the 1st Respondent's name from Ivolv IT Solutions Proprietary Limited to JE Consulting SA Proprietary Ltd as explained to the 2nd Respondent.
 - 31.2. The 1st Respondent's new name and naming convention was chosen to be in keeping with 1st Applicant's original intent to establish the 2nd Applicant and a secondary subsidiary operating arm in south Africa named "JE Consulting SA"; and
 - 31.3. Reflect and leverage the 1st Applicant's brand, track record and reputation.

 32. The establishment of the business relationship with the 1st and 2nd Respondents allowed the 1st Applicant to expedite the establishment of the secondary subsidiary operation;
 - 32.1. the 1st Respondent would appoint me as director of the 1st Respondent, to represent the Applicants' interests in the 1st Respondent; and
 - 32.2. the 1st Applicant would hold a 49% (forty nine percent) shareholding in the 1st Respondent. The 2nd Respondent's children's trust would remain the majority shareholder with a 51% (fifty one percent) shareholding in the 1st Respondent.

 33. The rationale underpinning the shareholding structure was that, by partnering with the 1st Respondent through an entity beneficially owned by a trust representing the 2nd Respondent's South African Children, the 1st Respondent would, as represented to us by the 2nd Respondent, comply with the Level 1 or 2 Broad Based Black Economic Empowerment (BBBEE) requirements. This compliance was at the time deemed necessary to the establishment and growth of the Applicants' business and operations in South Africa.

 34. To give effect to this joint venture partnership, Dunyaglo was appointed as a director of the 1st Respondent and an application was lodged with the 3rd Respondent on or about 29 August 2022, to change the 1st Respondent's name to JE Consulting SA Proprietary Limited. The 1st Respondent was renamed "JE Consulting SA" to reflect the Applicants' brand and the fact that the 1st Respondent was going to be an operation that would leverage of the 1st Applicants' brand, reputation, goodwill, track record, general knowhow, and experience to build out and establish
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the 1st Respondents business operations in South Africa. This is reflected in the 1st Respondent's use of the business profile and brochure compiled by the 1st Applicant a long time Nnadi and Dunyaglo set foot in South Africa.

35. The fact that the 2nd Respondent was a majority shareholder was not reflective of the contribution expected of the 2nd Respondent, but rather it was born of the perceived need to be BEE Compliant, which turned out to be a misguided conclusion. It is very evident from the 1st Respondent profile annexed in Annexure "C" the 2nd Respondent want not going to have a significant involvement in the running and operations of the business.

36. In the weeks following the establishment of the Applicants' business relationship with the 1st Respondent, it came to the Applicants' attention that the 2nd Respondent had been leveraging the Applicants' brand, reputation, platform, and track record to further the 2nd Respondent's personal interests, i.e., -

36.1. the 2nd Respondent without the approval of the members and directors of the 1st Respondent applied for a credit facility of R 60 000.00 (sixty thousand rand) from Pinnacle Micro Proprietary Limited ("Pinnacle"). Pinnacle approved this unauthorized credit application on the 14th of February 2023. We were unaware that such credit was applied for.

36.2. the 2nd Respondent used the Applicants' brand, reputation, track record and repute to further her own personal interest through the use of the 1st Applicant's email signatures in correspondences sent from the 2nd Respondent's old email account (info@ivolv-it.co.za) to acquire a dealer license from Core Proprietary Limited. The Applicants were not privy to these dealings in whose furtherance the Applicants' brand, name and goodwill were being used.

36.3. the 2nd Respondent on a number of occasions withheld information and operated as a one woman show.

36.4. In addition to the above, the Applicants began to suspect and realize that the 2nd Respondent's was not in keeping with the Applicants operating values and principles of honesty and integrity.

37. Due to the issues in paragraph 36 above, and to protect themselves from any potential damage to the Applicant's brand and reputation the Applicants decided to part ways with the 1st and 2nd Respondents.
38. Following protracted discussions the parties agreed to the following separation terms, namely that, -
- 38.1. The 1st and 2nd Respondents would lodge a name change application with the 3rd Respondent to change 1st Respondent's name, from J E Consulting SA Proprietary Limited, back to Ivolv IT Solutions Proprietary Limited.
- 38.2. Following the completion of the performance under paragraph 14.3.1 above, I, in my capacity as the Applicants' appointed representative on the 1st Respondent's Board of Directors would resign as a director of the 1st Respondent.
- 38.3. Once the separation terms had been executed the Applicants would then set up a separate secondary subsidiary entity in South Africa under the name and style of "JE Consulting SA" as originally intended prior to the establishment of the business relationship with the 1st and 2nd Respondents. The Applicants and the 1st and 2nd Respondents could then continue their separate and individual business activities without the involvement of the other.
39. Following the separation agreement, the 1st and 2nd Respondents have made no attempt to execute their performances under the agreement and change the 1st Respondent's name from its current name back to its original name per the agreed upon terms of separation. In fact, the 2nd Respondent's recent conduct is indicative of a deliberate attempt to renege on the agreed upon terms of the separation agreement.
40. The 2nd Respondent has made several attempts to have the deponent of the affidavit in support of the application removed as a director of the 1st Respondent without first performing her obligations under the separation agreement. This conduct the Applicants consider to be oppressive conduct by a majority shareholder in suppression of the Applicants' minority shareholder right to representation on the board of the 1st Respondent. This oppressive conduct has manifested itself in:

40.1. numerous calls for shareholder meetings by the 2nd Respondent with the sole agenda being to conduct a shareholder vote to remove Dunyaglo as a director of the 1st Respondent. These include a resolution accepting Dunyaglo's purported resignation as director of the Company, in flagrant disregard of the separation agreement that Dunyaglo would only resign following the lodgment of a name change application by the 1st and 2nd Respondents changing the 2nd Respondent's name. The 2nd Respondent has tried on a number of occasions to push through board resolutions whose only object is my removal as a director.

40.2. The 2nd Respondent launched an Application to the Tribunal (Case No. CT01283ADJ2023) to have Dunyaglo removed as a director of the 1st Respondent. The application was dismissed following the 2nd Respondent's request that the matter proceed by way of conciliation, mediation, or arbitration in terms of section 166(1) of the Companies Act, without electing which method to pursue. It is worth noting that since and Respondent's election at the Tribunal the Applicants and myself have yet to receive any communication from the 2nd Respondent indicating an intention on the 2nd Respondent's part to resolve this matter amicably.

40.3. The Applicants have been subjected to more oppressive conduct by the 2nd Respondent in the form of a notice of -

40.3.1. yet another shareholder's meeting whose only agenda is my removal as a director of the company without so much as an attempt to cite the grounds on which my removal is based; and

40.3.2. refusal to sign a resolution of the board of the 1st Respondent, that the 1st Respondent change its name according to the terms or the separation agreement.

41. The effect of Dunyaglo's removal as a director of the 1st Respondent, if accomplished, would be that the 2nd Respondent is free to continue leveraging Applicants name, brand, reputation and track record in furtherance of her personal interests to the Applicants' detriment without interference by the Applicants. The Applicant's found this state of affairs to be untenable as the 2nd Respondent is effectively attempting to hijack the Applicants' name and the goodwill associated with its brand in furtherance of her own interests and in doing so, effectively preventing the Applicants from the rightful use and benefit of its name, brand and goodwill in South Africa.

42. Despite the 2nd Respondent having agreed to the terms of separation, and despite the very evident irretrievable break down of trust between the Applicants and the 1st and 2nd Respondents, the 2nd Respondent has continued to leverage the Applicants' brand, goodwill, reputation and track record to secure business for the 1st Respondent.
- 42.1. This is evidenced by an application to be approved as a Dell Partner. In this application the 1st and 2nd Respondents used Dunnyaglo's certifications as well as the 1st Applicant's track record in order to meet the competence and qualifications requirements for Dell's Partner Program.
- 42.2. The 2nd Respondent represents and passes herself off as being the owner/co-owner of the Applicants' website as its own.
- 42.3. The 1st Respondent's website and in so doing creates the impression that the 1st Respondent is owned, operated, sponsored, supported, or endorsed by or enjoys the patronage of the Applicants.
- 42.4. Represents that the 1st Respondent has six branches/subsidiaries (just like the 1st Applicant) "Jean Edwards", "Jean Edwards Consulting" and "JE Consulting", together with our logo, brand and other marks are the Applicants trade marks and business identifiers.
43. The Applicants are in the ordinary course of their day-to-day business interchangeably referred to and known by their clients and other stakeholders as either "Jean Edwards", or "Jean Edwards Consulting" or "JE Consulting". It is therefore within our rights to demand that the 2nd Respondent honour the terms of our separation agreement with the 2nd Respondent as outlined in Annexure "M" by changing the name of the 1st Respondent back to its original name, Ivolv IT Solutions.
44. The Applicants have no interest in holding on to a shareholding in the 1st Respondent or retaining representation on its board of directors.
45. The Applicants merely want their name back before they exit the 1st Respondent and in so doing ensure that the harm it contemplated does not continue.
46. The Applicants want to leave with its name and the 2nd Respondent is through her oppressive conduct as a majority shareholder frustrating our efforts to exit the 1st Respondent with our most valuable contribution to the 1st Respondent because she understands the weight the Applicants'
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name carries and that without it the 1st Respondent would go back to being one that is as stated previously in the 2nd Respondent's own words *"not trading or offering services to any external parties."*

47. It is worth noting in no uncertain terms that, in effect the 2nd Respondent is through her oppressive conduct as a majority shareholder in the 1st Respondent, trying to highjack the Applicant's brand in South Africa and any potential benefit accruing to it through the use of the brand.
48. As it stands, Dunnyaglo has no choice but to remain as a director in the 1st Respondent as long as the 1st Respondent's name remains unchanged, and the Applicants will have no choice but to hold on to their shareholding in the 1st Respondent to ensure that the Applicants' rights and interests in its good name and brand are fully protected.

THE ALLEGED TRADE MARK INFRINGEMENT AND GROUNDS OF OBJECTION UNDER THE COMPANIES ACT

49. This Applicant based its application on Section 11(2)(b) and 11(2)(c)(i) of the CA, and makes the submissions below in the Applicant's affidavit in support of the application.
50. The 1st Respondent's name offends against section 11(2)(b) and 11(2)(c)(i) of the Companies Act in that it is confusingly similar to the Applicants registered, well known and distinctive trade marks "Jean Edwards", "Jean Edwards Consulting" and "JE Consulting". "Jean Edwards Consulting" "Jean Edwards" and "JE Consulting", which, together with our logo, brand and other marks are the Applicants' trademarks and business identifiers. The Applicants are in the ordinary course of their day-to-day business interchangeably referred to and known by their clients and other stakeholders as either "Jean Edwards", or "Jean Edwards Consulting" or "JE Consulting".
51. The continued use of "JE Consulting" as part of the 1st Respondent's name offends against section 11(2)(b) and 11(2)(c)(i) of the Companies Act and enables the 1st Respondent to pass themselves off as the Applicants as they both carry on similar businesses and the 1st Respondent has by virtue of the joint venture partnership entered into by the Applicants (who are presently shareholders in the 1st Respondent and are desperate to extricate themselves from any association with the 1st Respondent) and the 2nd Respondent full use of the Applicants' profile, logo, brand, website, email facilities and stationary. This, combined with the 2nd Respondent'

new name "JE Consulting" which the Applicants commonly refer to themselves as would, on a comparison of the relevant names, expressions or trademarks visually or phonetically, lead the public to believe that or be under the impression that:

- 51.1. the 1st Respondent is one in the same person and business as the Applicants or that the 1st Respondent is a subsidiary operation or business of the Applicants formed for the purposes of rendering services on behalf of the Applicants; and
 - 51.2. the 1st Respondent is still operated, sponsored, supported, or endorsed by or still enjoys the patronage of the Applicants when the Applicants have withdrawn their authorization to the continued use of the name "JE Consulting" by virtue of the fact that they have indicated that they wish to terminate the joint venture partnership with the 2nd Respondent and relinquish their shareholding in the 1st Respondent.
52. Section 11(2)(b) and (c)(i) of the Companies Act provides against unauthorised registration of a company name which is confusingly similar to the Applicants name, trade mark or mark and that is likely to mislead a person into believing that the 1st Respondent is associated with the Applicants. The Act has clarified any possible ambiguity by stating in plain words that a name which is the same as or is confusingly similar to a registered trade mark offends against the provisions of the Act, if, the registered owner of the trade mark has not authorised the use thereof.
53. The 1st Respondent does not have the Applicants' authorization to continue using a name the Applicants gave it to benefit from the Applicants' brand, reputation, track record and goodwill in establishing the 1st Respondent's business.
54. Section 160(1) of the Act entitles a person with an interest in the name or registration to the name of a company to apply to the Tribunal for a determination whether the name of a company satisfies the requirements of the Act.
55. The Applicants are the proprietors of the trademark "Jean Edwards", or "Jean Edwards Consulting" or "JE Consulting". The 1st Respondent's name incorporates Applicants' JE Consulting" trade mark. The 1st Respondent's name was changed upon the agreement of the Applicants and the 2nd Respondent from Ivolv TI Solutions Proprietary Limited to JE Consulting SA Proprietary Limited.

56. The 1st Respondent's new name and naming convention was chosen by the Applicants to be in keeping with 1st Applicant's original intent to establish the 2nd Applicant and a secondary subsidiary operating arm in South Africa named "JE Consulting SA" and to reflect and leverage the 1st Applicant's brand, track record and reputation. This information suffices to establish that the Applicants are persons with an interest in the 1st Respondent's name and accordingly, the Applicants legal standing to launch this application.
57. Section 160(2)(b) entitles a person with an interest in the name or registration of the name of a company to launch an application on good cause shown, at any time after the date of the registration of the name that is the subject of the application.
58. The Applicants have common law rights in the name "JE Consulting". The 1st Applicant was founded in 2005 and has for the past 16 (sixteen) years in the ordinary course of their day to day business been interchangeably referred to and known by their clients and other stakeholders as either "Jean Edwards", or "Jean Edwards Consulting" or "JE Consulting". The Applicants' name, brand and logo are known worldwide to clients, potential clients and stakeholders around the world, for has providing the highest quality Information Technology, Strategy and Management Consultancy services to the finance industry and the public sector.
59. The Applicants are the proprietors of the website, www.janedwards.com which the 1st Respondent has been passing off as its own. The Applicant also has a LinkedIn page with over 4000 followers across the globe.
60. Furthermore, the Applicants have over 70 employees spreads across offices in the United Kingdom, United States of America, Switzerland, Latvia, Nigeria and South Africa. The most prominent feature of the Applicants' logo are the letters "JE" followed by the words "Jean Edwards Consulting" under the letter "JE". Internally and externally the company is often referred to as "JE Consulting".
61. When the Applicants established their operations in South Africa and entered into business with the 1st and 2nd Respondents, the Applicants and the 2nd Respondent agreed to change the 1st Respondent's name to "JE Consulting SA" to reflect and leverage the 1st Applicant's brand, track record and reputation for the benefit of the 1st Respondent.
62. It is trite law that the protection of rights in respect of unregistered trademarks is available to the proprietor of the mark if prior use and the well-knownness of the mark is shown. The above facts suffice to show the mark was in use and well known for almost 17 years before the 1st

Respondent's name was registered on the behest of the Applicants who have now withdrawn their approval of the continued use of the name by the 1st Respondent.

THE SUBSTANTIVE ISSUE FOR CONSIDERATION

63. The substantive question for consideration is whether the first Respondent's name satisfies the requirements of the CA, more specifically sections 11(2)(b) and 11 (2)(c)(i) of the Companies Act.

ANALYSIS AND EVALUATION

64. 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."

65. 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."

66. Considering the Applicants uncontroverted submissions above, I conclude that the Applicants have shown good cause to bring this application under section 160(2) of the CA.

67. The next question is whether the first Respondent's name and the Applicant's trade mark are confusingly similar as envisaged in section 11(2)(b) of the Companies Act?

68. Section 11(2)(b) provides that –

"(2) The name of a company must-

(a) 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...*

69. When the 1st Applicant entered into the business relationship with the 2st Respondent they agreed to the 1st Respondent's name change from "Ivolv TI Solutions Proprietary Limited" to "**J E CONSULTING SOUTH AFRICA (PTY) LTD.**" for the 1st Respondent to leverage the 1st Applicant's name, brand, reputation and track record and the goodwill associated with its brand.

70. This was clearly in recognition that the 1st Respondent's name was and is "... *confusingly similar to the Applicants' name, trade marks, marks, words or expressions contemplated in paragraph (a) unless,...*", hence the Applicants' specifically authorised the 1st Respondent's name change.

71. This permission above was in effect the authorization envisaged in section 11(2)(b)(vi) of the CA i.e.,

"...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..."

72. When the relationship between the parties soured and they entered into a separation agreement and agreed to change the 1st Respondent's name to "Ivolv TI Solutions Proprietary Limited" its original name, the permission under section 11(2)(b)(vi) was vitiated. To give effect to that term of the separation agreement, the 1st Respondent had to change its name back to its original name. This is did not do.

73. Section 11(c)(i) provides that -

"(2) *The name of a company must-*

(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..."

74. The effect of the 1st Respondent not changing its name back in accordance with the separation agreement in effect means that the 1st Respondent, in the Applicants words, "... *is free to continue leveraging Applicants name, brand, reputation and track record in furtherance of her personal interests to the Applicants' detriment without interference by the Applicants. The Applicant's found this state of affairs to be untenable as the 2nd Respondent is effectively attempting to hijack the Applicants' name and the goodwill associated with its brand in furtherance of her own interests and in doing so, effectively preventing the Applicants from the rightful use and benefit of its name, brand and goodwill in South Africa.*"
75. I find that the 1st Respondent's name contravenes the provisions of section 11(2)(b) of the CA in that the 1st Respondent's name is confusingly similar to the Applicants' name, trade mark, or mark; or word or expression used in the Applicants' name, trade mark, or mark.
76. I further find that the 1st Respondent's unauthorised use of the 1st Applicant's '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, is not the case since the parties agreed to go their separate ways.
77. I further find that the 1st Respondent's name to be so confusingly similar to the Applicant's trade mark 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)(i) of the Companies Act.

CONSIDERATION OF THE ORDERS SOUGHT

78. The Applicant prays for an order in terms of the accompanying form (CTR 142) to this affidavit, namely that:

78.1. declaring that the 1 Respondent's name does not comply with sections 11(2)(b) and 11(2)(c)(i) of the Companies Act;

78.2. directing the 1st Respondent, in terms of section 160(3)(b)(i) of the Companies Act, to change its name to one which does not consist of, or incorporate, the "JE Consulting", or any other mark which is confusingly and/or deceptively similar to the applicant's "JE Consulting" trademark;

78.3. authorising and directing the 3rd Respondent to change the name of the 1st Respondent to its original name "Ivolv IT Solutions" or any other name of its choice or alternatively its registration number, in the event of the 1st Respondent not complying with paragraph 7.2 above within 10 (ten) days from the date of this order.

79. 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.”

80. The Honourable 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".

81. 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.

ORDER

82. Having considered the Applicant's application, the orders the Applicants seek, and the orders the Tribunal may grant, I hereby:

82.1. Directs the 1st Respondent to change its name to one which does not incorporate and is not confusingly and or deceptively similar to the 1st Applicant's "Jean Edwards", "Jean Edwards Consulting" and "JE Consulting", trade marks. It must not include the 1st Applicant's "Jean Edwards", "Jean Edwards Consulting" and "JE Consulting", trade marks or a name phonetically identical to the word "JE Consulting" in the new name.

82.2. Directs the 1st 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 per paragraph 82.1 above.

82.3. Exempts the 1st Respondent from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.

82.4. Authorises and directs the 3rd Respondent to change the name of the 1st Respondent to its original name "Ivolv IT Solutions" or any other name of its choice, alternatively to its

registration number, in the event of the 1st Respondent not complying with paragraphs 82.1 and 82.2 above; and

82.5. Instructs the Registrar of the Companies Tribunal to bring this ruling to the attention of the Respondents.

DATED AT JOHANNESBURG THIS 17th DAY OF OCTOBER 2023.

MS D R TERBLANCHE

MEMBER OF THE COMPANIES TRIBUNAL