



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01489ADJ2023

In the matter between:

Autox (Pty) Ltd
(Registration Number. 2016/475012/07)

Applicant

and

Willard installations and Maintenance (Pty) Ltd
(Registration Number. 2021/923247/07)

1st Respondent

**COMPANIES AND INTELLECTUAL PROPERTIES
COMMISSION**

2nd Respondent

Date of Decision: 30th January 2024

DECISION

INTRODUCTION

1. The Applicant is Autox (Pty) Ltd. It is a duly incorporated South African company, registered under number 2009/016411/07.

2. The First Respondent is Willard installations and Maintenance (Pty) Ltd. It is a duly incorporated South African company, registered under number 2016/475012/07.

3. The Second Respondent is the Companies and Intellectual Properties Commission resident at DTI Campus 77 Meintjies Street

4. The Applicant applies to the Companies Tribunal in terms of Section 11(2) of the Companies Act 71 of 2008 (“the Companies Act”), a name of a company must not be the same as the name of another company, domesticated company, registered external company, close corporation or co-operative and must not be confusingly similar.

APPLICANT’S SUBMISSIONS

5. On 31st August 2023 the Applicant filed its company name objection with the Companies Tribunal and the applicant served the company name on the respondent. Despite being informed of the application the first respondent does not oppose it.

6. Despite various correspondence the Respondent has failed to deregister its name

7. The Applicant submits that the Respondents name is confusingly similar to its trademark.

8. The Applicant has been in business for several years. The Respondent was only registered in 2021. The Applicant has a registered trademark in the name "Willard". The Respondent's name includes the word "Willard". Members of the public will confuse the Respondent with the Applicant. This will affect the Applicant's reputation and it will also affect the Applicant financially.

9. The Applicant argues that the Respondent's name is confusingly similar to the Applicant's "trademark" and would deceive the public.

APPLICABLE LAW

10. Section 11 of the Companies Act provides the criteria for names of companies.

Subsection (2) is most relevant and states as follows:

"(2) the name of a company must –

(a) not be the same as, or confusingly similar to –

(i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names;

(ii) ... Not relevant

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

trademark or a well-known trademark as contemplated in section 35 of the trademarks act; or

(iv) ... Not relevant

(b) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company –

(i) is part of, or associated with, any other person or entity;

...”


EVALUATION AND FINDINGS

11. Section 11 (2) of the Companies Act requires me to determine whether the name of the respondent is confusingly similar to that of the Applicants registered trademark. The Respondents name has the Applicants trademark “Willard”. When members of the public see the Respondents name, they will think of the Applicants Trademark. This may give members of the public the impression that it is owned by the Applicant with the potential to cause reputational damage causing financial harm to the Applicant.

12. The purpose of section 11 of the Companies Act is to protect names from being passed off by new companies registering similar names at the expense of the original name holder of the company or trademark. I thus find in favour of the Applicant.

ORDER

- a. I find in favour of the Applicant.
- b. The First Respondent is directed to change its name to one which does not incorporate and is not confusingly and or deceptively similar to the Applicant's. It should not include the word WILLARD in any form.
- c. The First Respondent is to file a notice of an amendment of its Memorandum of Incorporation, within 60 days of receipt of this order in order to change its name as per above.
- d. In the event that the First Respondent fails to comply with the order as aforementioned, within 3 months, from the date of the order, that Companies and Intellectual Property Commission CIPC be directed, in terms of Section 160(3) (b) (ii) read with section 14(2) of the Act, to change the respondent's name to is registered company number being 2016/475012/07as the Respondent's interim company name on the Companies register.
- e. The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
- f. This Determination must be served on the Respondent and the Registrar of Companies and Intellectual Property Commission.



MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL