



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NUMBER: CT006JUL2018

In the matter of:

BUDGET CONFERENCES CC

APPLICANT

and

BUDGETTRAININGS (PTY) LTD

RESPONDENT

Coram: PJ Veldhuizen

Date of Hearing: Not Applicable – Default Order

Order delivered: 28 August 2018

DEFAULT ORDER & REASONS

A. INTRODUCTION

1. THE PARTIES

1.1. The Applicant is **BUDGET CONFERENCES CC** (“the Applicant”) represented by its sole member **LUMAMBA S MWAANZA**, a close corporation duly incorporated and existing under the company laws of South Africa, having its registered place of business at No 1 Sixth Avenue, Melville, Gauteng, 2092.

1.2. The Respondent is **BUDGETTRAINING (PTY) LTD** (“the Respondent”), a private company incorporated in terms of company laws of the Republic of South Africa with registered office address at No 377 Beoluvard, Rivonia, Sunninghill, Gauteng, 2191.

B. THE APPLICATION

2. This is an application for a Default Order against the Respondent. The application is presumably based on Sections 11 and 160 read with Regulation 153 of the Companies Act No 71 of 2008 (“the Act”).

3. The Applicant alleges that the Respondent was registered by a former employee “maliciously this year to pass off as Budget Conferences”.

4. The Applicant seeks an Order directing the Respondent to change its name to a name that meets the requirements of the Act.

C. POINTS FOR DETERMINATION

5. Were the Tribunal’s procedural requirements met?

5.1. The Applicant is required to establish good cause in terms of section 160(2)(b) of the Act as to why there has been a delay in bringing this application after

becoming aware of the Respondent's registration. The Applicant does not indicate when it became aware of the existence of the Respondent but does not appear to have been unreasonably dilatory in bringing this application.

5.2. Accordingly, the Tribunal accepts that the Applicant has satisfied the requirement contemplated in section 160(2)(b) of the Act.

5.3. The Applicant has served the papers in accordance with Act and the Respondent has failed to answer within the required time period.

D. EVALUATION OF EVIDENCE

6. The Applicant testifies *inter alia* that the Respondent is soliciting its clients and committing unlawful competition, in that it is passing itself off as the Applicant.

7. The Tribunal is a creature of statute and does not enjoy jurisdiction to hear matters of passing off unless same is specifically envisaged in the Act.

8. The Applicant alleges that by the Respondent's registration and use of the similar name to the Applicant, it is passing itself off as a branch of the Applicant and in so doing, soliciting the Applicant's clients. The Applicant alleges further that an erstwhile employee of the Applicant, Miss Beula Masuku,¹ unbeknownst to the Applicant registered an email address belonging to the Applicant in her name while she was in the Applicant's employ and utilized this email address to conduct business for the Applicant while she was so employed. The Applicant further alleges that this employee now continues to utilize this email address to solicit the Applicant's customers.

¹ Who may or may not be related to the director of Respondent, Ben Masuku.

9. The use of the word “BUDGET” in the Respondent’s company name does not appear to be the proximate cause of the solicitation and confusion. It would rather appear that the use of the email address referred to above is the cause. The Tribunal does not have jurisdiction to interdict the use, by the Respondent of this email address. In any event, the Tribunal is not convinced that the use of the word “BUDGET” in the Respondent’s company name offends Section 11 of the Act as the word is descriptive and anecdotally the Tribunal finds it is used pervasively in many company names and market offerings.

E. DECISION

10. The Applicant’s request for a Default Order is refused.

PJ VELDHUIZEN

MEMBER OF THE COMPANIES TRIBUNAL

CAPE TOWN