



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT00401ADJ2020

In the matter between:

ABSA BANK LTD

Applicant

(Registration Number. 1986/004794/06)

and

ABZAS SOLUTIONS (PTY) LTD

Respondent

(Registration Number. 2020/005951/07)

Date of Decision: 30th December 2020

DECISION

INTRODUCTION

1. The Applicant is Absa Bank Limited. It is a duly incorporated South African company, registered under number 1986/004794/06. It has its principal place of business at 7th Floor, Absa Towers West, 15 Troye Street, Johannesburg, Gauteng, 2000.

2. The respondent is ABZAS Solutions (Pty) Ltd. It is a duly incorporated South African company, registered under number 2020/005951/07. It has its

principal place of business at 6268 Constantia Park, Maokeng, Kroonstad, Free State, 9449.

3. 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

4. On 01 July 2020 the applicant filed its company name objection with the Companies Tribunal and on 02 July 2020 the applicant served the company name objection on the respondent by electronic mail. An electronic mail and proof of receipt was provided by the Applicant. Despite being informed of the application the first respondent does not oppose it.

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

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

7. The Applicant is well known in South Africa and globally with 1074 branches 4846 employees. It is well known in social media and has over 20 trademarks in its name and logo. It's a well known brand in the financial, banking and insurance industry

8. The Applicant argues that the Respondents name is confusingly similar to the Applicants and would deceive the public even though the Respondent is in the food business. There is case law to justify this.

APPLICABLE LAW

[1] 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

[2] 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 trademark. ABZAS sounds confusingly similar to ABSA, for which the Applicant has a number of trade marks. The names look similar and sound similar despite the S being replaced by a Z in ABZAS. When members of the public see the Respondents name they will think of the Applicant. Even though the Respondent is not in the same business as the Applicant it may give members of the public the impression that it is owned by the Applicant with the potential to cause reputational damage.

[3] 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 trade mark. I thus find in favour of the Applicant

[4] In its papers that Applicant shows that it had given the respondent ample opportunity to change its name, which the respondent had agreed to do on numerous occasions but had failed to do so forcing the Applicant to make such an application and undertake unnecessary cost. I thus also find that a cost order is appropriate in favour of the Applicant.

- [1] I find in favour of the Applicant
- [2] The Respondent is directed to change its name to one which does not incorporate and is not confusingly and or deceptively similar to Applicant's. It should not include the word future.
- [3] The 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 2 above.
- [4] In the event that the 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 2020/005951/07 as the Respondent's interim company name on the Companies register.
- [5] The Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
- [6] This Determination must be served on the Respondent and the Registrar of Companies and Intellectual Property Commission.
- [7] The Respondent is to pay the applicants costs for this application on an attorney client scale.

MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL

MEMBER OF THE COMPANIES TRIBUNAL