



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

**CASE NO: CTO1505ADJ2023**

In the matter between:

**WIRULINK (PTY) LIMITED**

Applicant

and

**WIRUNET INTERNET SERVICE PROVIDER (PTY) LTD**

1<sup>st</sup> Respondent

(Registration Number. 2023/907992/07)

**COMPANIES AND INTELLECTUAL PROPERTIES**

**COMMISSION**

2<sup>nd</sup> Respondent

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### DECISION

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Date of Decision: 30<sup>th</sup> November 2023

Tribunal Member: Hlaleleni Kathleen Dlepu

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### INTRODUCTION

1. The Applicant is **WIRULINK(PTY) LIMITED**, a company duly incorporated under the South African company laws, with registration number **2006/011482/07** whose principal place of business is 381Ontdekkers Road Florida Park Ext 3 1709.

2. The First Respondent is **WIRUNET INTERNET SERVICE PROVIDER (PTY) LTD**, a company duly incorporated under the South African company laws, with registration number **2023/907992/07** whose principal place of business is 220 Nelson Mandela Drive, Tempe, Bloemfontein, Free State.9301
3. The Second Respondent is the **COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION** resident at DTI Campus, 77 Meintjies Street, Pretoria.
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 the 22<sup>nd</sup> of September 2023 the Applicant filed its company name objection in accordance with form CTR 142 issued in terms of section 180 to 184 of the Companies Act 2008, and Regulation 145 of the Companies Regulations, 2011, wherein the Applicant requested the Companies Tribunal to grant ordering the second Respondent to change its name and delete their website and social media due to copyright infringements.
6. The Applicant served the company name objection on the First Respondent. The First Respondent was informed of the name objection on numerous occasions and despite being informed of the application the First Respondent does not oppose it.
7. Despite various correspondence the First Respondent has failed to deregister its name
8. The Applicant submits that the First Respondent’s name **WIRUNET** Internet Service Provider is confusingly similar to its well-known **WIRULINK** trademark.

9. The Applicant has extensive common law and statutory rights in the name **WIRULINK** since 2006. The First Respondent was only registered in 2023 and is in a similar industry. The two names are confusingly similar, and this will affect the Applicants reputation and it will also affect the Applicant financially.

10. The Applicant argues that the First Respondent's name is confusingly similar and phonetically similar to the Applicants, and this would deceive the public. The Applicant further alleges that the First Respondent is registered in the similar industry and has also copied information policies etc. illegally from the Applicants website and used it as their own without the Applicants permission and authority.

### **APPLICABLE LAW**

11. 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

12. Section 11 (2) of the Companies Act requires me to determine whether the name of the respondent is confusingly similar and phonetically similar to that of the Applicants well known **WIRULINK** trademark. The names both start with the word **WIRU** in them. The names look similar and sound similar, and they are in the similar industry.
13. When members of the public see the Respondents name, they will think of the Applicant. Both the Applicant and the Respondent are in a similar business. 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.
14. 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.
15. Having considered the Applicant's submissions, I find in favour of the Applicant. I therefore make the following order:

## ORDER

- a. The First 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 **WIRULINK** and or **WIRU** in any form.
- b. 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.
- c. 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 its registered company number being 2023/907992/07 as the Respondent's interim company name on the Companies register.

- d. The First Respondent is hereby exempted from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.
- e. This Determination must be served upon the Respondent and the Registrar of Companies and Intellectual Property Commission.

**HLALELENI KATHLEEN DLEPU**  
**MEMBER OF THE COMPANIES TRIBUNAL**