REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 19/3212

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

18/3/2019
DATE

SIGNATURE

GENESIS ONE LIGHTING (Registration No. 2014/158269/07)	Applicant
and	
JAMIESON, BRADLEY LLOYD	First Respondent
STREAMLIGHT FX (PTY) LTD (Registration No. 2000/003931/07)	Second Respondent
IRON ICE (PTY) LTD (Registration No. 2018/483945/07)	Third Respondent
FITTINGHOFF, RODNEY GERSON	Fourth Respondent
KALISH, BRAD ANTHONY	Fifth Respondent
KALISH, ROBERT LARRY	Sixth Respondent
RIVIND, JASON	Seventh Respondent

J U D G M E N T

MAHALELO, J:

INTRODUCTION

[1] This is an application in terms of which the applicant seeks *inter alia,* to interdict and restrain the respondents from utilising its confidential information as well as for an order for the return of such confidential information in whatever form. The applicant also seeks an order interdicting the first respondent from taking up employment with the second and third respondents in any capacity whatsoever whether directly or indirectly in the carrying on of the business of the second and third respondents. In its notice of motion, the applicant seeks relief in the form of a final interdict, in the alternative, and in the event of the Court finding that there are disputes of fact which cannot be resolved on paper, the applicant seeks an interim interdict pending the determination of the action to be instituted by the applicant.

[2] The first respondent acknowledges that a *Confidentiality Agreement* was concluded between him and the applicant on the 18th of August 2015. However, many of the facts relevant to the issue whether the applicant's trade secrets and connections required protection are in dispute.

[3] The general rule stated in *Plascon-Evans Paints v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634 E – 635 C that an application for final relief is generally decided on a respondent's version applies also where

the onus is on the respondent as it is in this case. The ordinary rules accordingly apply, that is, if there are facts in dispute on the papers and the Court is satisfied on the facts as stated by the respondent, together with the admitted facts in the applicant's affidavit, that the applicant is entitled to relief, then will the applicant be given a final relief.

[4] In an application for an interim interdict the correct approach in deciding whether the applicant has established entitlement to the relief especially where there are dispute of facts,

> *".is to take the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether having regard to the inherent probabilities the applicant should on these facts obtain a final relief at the trial of the main action."*

See *Cape Town Municipality v L F Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C).

[5] The applicant carries on business in the distribution of lighting products. The first respondent is a former Sales Representative of the applicant, and is presently in the employ of the third respondent as one of its directors. It is alleged by the applicant that the first respondent has unlawfully appropriated its confidential information and the respondents are unlawfully utilising this information to unlawfully compete with it.

[6] The respondents contend *inter alia*, that the applicant is seeking far reaching interdictory relief and is effectively seeking to enforce a restraint of trade against the first respondent in circumstance where no restraint of trade agreement was concluded.

[7] The specific relief sought in the notice of motion is an order in the following terms:

7.1 Interdicting the respondents from:

7.1.1 using the applicant's confidential information relating to the applicant's clients and/or suppliers as listed in annexure "A" hereto, in any manner, whether directly or indirectly for the purposes of soliciting the business of the applicant its clients and suppliers, competing with the business interests of the applicant;

7.1.2 contacting, canvassing, dealing, soliciting or diverting, securing or attempting so to do any existing client or supplier of the applicant and as more specifically listed in annexure "A" hereto;

7.1.3 any conduct which will have the effect of damaging the goodwill or client or business relationships of the applicant;

7.1.4 copying, transmitting or transcribing, or rendering in usable form, any existing client and supplier data relating to the applicant and as more specifically listed in annexure "A" hereto;

7.1.4 making available to any other party or entity, whether in digital form or otherwise, any client data or contact information relating to any existing client and supplier of the applicant and as more specifically listed in annexure "A" hereto.

7.2 The first respondent be interdicted and directed forthwith to deliver up to the applicant all documents whether in digital form or otherwise in his possession or control relating to the applicant's business, clients and/or suppliers, representing and/or containing any documents, reports and/or specifications relating to the know-how and/or unique selling points ("*USP*") of the applicant's products, and/or from further disseminating and/or making available to any person including specifically the second, third, fourth, fifth, sixth and seventh respondents same.

7.3 The second, third, fourth, fifth, sixth and seventh respondents be interdicted and directed forthwith to deliver up to the applicant all documents whether in digital form or otherwise in their possession or control relating to the applicant's business, clients and/or suppliers, representing and/or containing any documents, reports and/or specifications relating to the know-how and/or unique selling points ("*USP*") of the applicant's products, and/or

from further disseminating and/or making available to them by the first respondent whether directly and/or indirectly.

7.4 The first, second, third, fourth, fifth, sixth and seventh respondents be interdicted from using any of the applicant's confidential information and/or trade secrets and/or pricing structure including client and/or supplier lists, USP and know-how to unlawfully compete with the applicant whether as a springboard or otherwise to advance the business of the second and/or third respondents or any interest either directly or indirectly of the first, second, fourth, fifth, sixth and seventh respondents in the second and third respondents.

7.5 The second and third respondents are interdicted from employing the first respondent in any capacity whatsoever whether directly or indirectly in the carrying on of the business of the second and third respondents.

7.6 The second and third respondents are to deliver to the applicant:

7.6.1 forthwith all documents relating to the ordering, quotation and invoicing by them or received from the applicant's supplier iof lighting products ZHEJIANG SHENGHUI LIGHTING CO, LTD t/a Sengled;

7.6.2 a report to the applicant upon receipt of the lighting product ordered by them from Sengled reflecting the quantity of product received together with product specifications and description supported

by all documents exchanged by them with Sengled and in particular bill of lading and/or way bills, or the like;

7.6.3 an accurate report each month from 31 March 2019 and the end of each succeeding month accounting for all sales, duly supported by purchase orders, invoices and delivery notes, for the lighting product ordered and received from Sengled.

BACKGROUND FACTS

[8] As already indicated, the applicant conducts business in the distribution of lights. It is the supplier of premium LED (light emitting diode) lamps. The applicant contend that is has invested considerable time, effort and expense in ensuring that its lamps are an appropriate match to its target market and it describes this as its unique selling points ("USP").

[9] The first, fourth, to seventh respondents are directors of the third respondent who the applicant alleges has been established as a vehicle through which the first respondents intend competing with it. The fourth to sixth respondents are directors of the second respondent who is also in the lighting business. The second respondent is also a customer of the applicant.

[10] In January 2015 the applicant commenced active trade and marketing. The first respondent commenced his employment with the applicant in August 2015 as a Sales Representative. The first respondent was responsible for

new business development at the time. On 18 August 2015, the applicant and the first respondent concluded a written *"Confidentiality Agreement."* On 28 August 2015, the first respondent and the applicant together with Chapman (one of the directors of the applicant) concluded a written Share incentive agreement whereby the first respondent, after completion of performance standards became a shareholder in the applicant. On 1 January 2016, the first respondent was appointed a director of the applicant. At the beginning of 2018, the first respondent expressed his unwillingness to continue to hold the aforesaid position and on 28 May 2018, he resigned as a director but remained employed with the applicant as Sales Representative. He was still responsible for new business development.

[11] The written agreement which the first respondent and the applicant signed is annexed to the papers. The relevant terms of the *Confidentiality Agreement* marked as annexure ("MAB4") reads as follows:

> *3." Confidential Information"*
>
> *3.1 "Confidential information" means all information or data disclosed of whatever nature (whether in writing, orally or by any other means) by the Disclosing Party to the Receiving Party, or by a third party on behalf of the Disclosing Party, and shall include but not limited to:*
>
> *3.1.1 any information relating to the Disclosing Party's business, operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs; and*

3.1.2 the existence, content and nature of this Agreement.

3.2 "Confidential information" shall exclude any part of such disclosed information or data;

3.2.1 which is or becomes public knowledge in any way without breach of this Agreement by the Receiving Party; or

3.2.2 which the Receiving Party can show was in its possession or known to it or being recorder in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or

3.2.3 which the Receiving Party can show to have been developed by or for the Receiving party at any time, prior to or after the termination of the relationship between the Receiving Party and Disclosing Party, independently of the information disclosed by the Disclosing Party; or

3.2.4 which is hereafter disclosed or made available to the Receiving Party from a source other than the Disclosing Party without breach by the Receiving Party or such source under an obligation of confidentiality or non-use towards the Disclosing Party; or

3.2.5 which is hereafter made generally available by Disclosing Party or a third party or is disclosed by the Disclosing Party to a third party without restriction on disclosure or use.

4. Confidentiality and other obligations

4.1 The Receiving party undertakes in relation to the Disclosing Party's Confidential Information;

4.1.1 to keep it confidential and not to disclose it to any person by any means, without prior written consent of the Disclosing Party;

4.1.2 to use it only for the purpose for which the Disclosing Party has disclosed it to the Receiving party and for no other purpose and in particular, but without prejudice to the generality of the foregoing;

4.1.2.1 not to make any commercial use thereof;

4.1.2.2 not to use the same for the benefit of itself or of any third party;

4.1.2.3 not to use the same for the purpose of guiding or conducting a search of any information, materials or sources, whether or not available to the public, for any purpose whatsoever, including, without limitation, for the purpose of demonstrating that any information falls within one of the exceptions set out in this Agreement;

4.1.3 not to copy, reproduce or reduce to writing any part thereof except as may be reasonably necessary for the purpose for which it was disclosed to the Receiving Party, and that any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party;

4.1.4 to apply thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information and which the Receiving Party warrants as providing adequate protection of such information from unauthorised disclosure, copying or use; and

4.1.5 to disclose it only to its officers, directors, employees, consultants and professional advisers who;

4.1.5.1 have a need to know (and then only to the extent that each such person has a need to know);

4.1.5.2 are aware that the Confidential Information should be kept confidential;

4.1.5.3 are aware of the Receiving Party's undertaking in relation to Confidential Information in terms of this agreement; and

4.1.5.4 have been directed in writing by the Receiving Party to keep the Confidential information confidential and have accepted such directive in writing. "

[12] The applicant alleges and it is not disputed that its key supplier is amongst others, Sengled in China. It is also not disputed that applicant's products are sourced primarily from this supplier. Material to this application is the applicant's supplier Sengled. The applicant claims that the second and third respondents received its confidential information pertaining to its supplier Sengled through the first respondent and they used same to source products from Sengled. It is the applicant's contention that the respondents are colluding to use the applicant's confidential information to obtain specified product from the applicant's supplier without the need to go through the expense and effort of sourcing, verifying, confirming specifications, product quality, compatibility and its utility in the South African market as undertaken by the applicant.

[13] On the other hand the sixth respondent allege that the second respondent has competed with the applicant in the lighting market and the applicant is using this application for ulterior purposes of shifting the lawful competition. The sixth respondent contends that the applicant does not substantiate its bald assertion that its product has "USP". Accordingly, the sixth respondent contends that the specifications of an LED lamp are in any way detailed on its packaging and the features of the product are known to everyone. The sixth respondent concedes that it is a difficult task to find and identify "premium supplier" in China. However, the sixth respondent submits that the second respondent identified the supplier Sengled in China by using its own efforts. Sixth respondent further stated that identifying premium suppliers of LED lamps in China is an easy task as with a simple Google search one is able to determine the 10 top LED suppliers in China, and furthermore, that reputable Chinese suppliers take pride in their customers and they would disclose their customers as part of their sales pitch to demonstrate their credentials. The Sixth respondent avers that when he visited Sengled factory in China, its representatives advised him that they were already supplying product to the applicant. The respondents therefore argue that the applicant's reliance on the identity of Sengled and the USP of its GU10 LED lamp is fundamentally flawed as this information has already been disclosed to the respondents.

[14] On 07 November 2018 at 1;37pm the first respondent emailed from his gmail address to the sixth respondent confidential information of the applicant. The email is an instruction by the first respondent to the sixth respondent and it is titled *"Please see attached. What to ask for"*. The email evidences and discloses the following:

> *"7 watt GU10, dimmable, 3year warranty, 550 lumen, power factor> 0.8 15000 x 3000k, 2000 x 2700k, 4000 x 4000k, Target price $1.40, 5w b35 clear candle, dimmable, 3000k, 470 lumen, 3year warranty".*

The applicant explains that this email discloses its GU10 quote from Leon LV of Sengled, contact details of the applicant's supplier Sengled in China, applicant's negotiated price with Sengled, test reports, performance reports and data sheet.

[15] On the 13 November 2018 the first respondent sent three emails to the sixth respondent. The emails contain pro-forma invoice from Sengled, performance test report, quotation from Sengled, images of candle lamps sourced from Sengled. (The applicant alleges that it received the first batch of these candle lamps on 21 January 2019), images of applicant's packaging, artwork and specifications, an attachment with reference number "14470 psd" (the applicant alleges this is a code for the candle lamp and "psd" is the file reference thereto created by Chapman.

[16] On 4 December 2018 the first respondent sent an email to the sixth respondent enquiring if he has not received any news from the factory on the GU10'S and candles.

[17] On 26 December 2018 the sixth respondent sent an email to the first, fourth, fifth and seventh respondents. The email refers to *"artwork"* which according to the applicant refers to the packaging requirements to be given to Leon of Sengled.

[18] On 14 January 2019 the first respondent sent an email to the sixth respondent in which he states *"I only have this one file, artwork from previous supplier. Box should be the same, suggest we get from Leon their cut lines to be sure"*. The applicant submits that the image depicted on the email is the design of its product packaging sourced and paid for by it and it forms part of its confidential information.

[19] On 15 January 2019 Filomena Goncalves of the second respondent sent an email to the first, fourth, fifth, sixth and seventh respondents. The email reference "*Registration of new company Iron Ice (Pty) Ltd",* who is the third respondent. A meeting of the first, fourth, fifth, sixth and seventh respondents scheduled for 18 January 2019 is recorded. The applicant alleges that on that same day the first respondent had stated that he had attended a meeting with the second respondent. The applicant submits that the meeting was for purposes far removed from the advancement of the applicant's business by the first respondent as an employee. According to the

applicant the meeting was a furtherance of the unlawful and collusive conduct of the first respondent together with the other respondents to compete and bring forth the business of the third respondent, by unlawfully using the applicant's confidential information.

[20] On 21 January 2019 the first respondent took a photograph of the screen of the first respondent's computer. An email dated the 3 December 2018 was reflected. It was an email from the sixth respondent to Sengled recording that the first and sixth respondents visited Sengled in China on Friday.

[21] On 22 January 2019 the first respondent resigned from the applicant. On 24 January 2019 the applicant acknowledged the first applicant's resignation and indicated to him that he was not required to attend at the company's premises any longer and that he was excused from working during his notice period. The applicant reminded the first respondent of clause 5 of the confidentiality agreement and further requested him to return all company documents and material, which contained the company's confidential information.

[22] Once more on 25 January 2019 the applicant's attorneys sent to the first respondent a letter demanding an unconditional undertaking that the applicant's confidential information would not be used, the applicant's customers and clients will not be solicited and demanded delivery of all

applicant's confidential information in whatever form. When an undertaking was not forthcoming, the applicant launched the present application.

EVALUATION OF THE EVIDENCE

[23] The existence of the *Confidentiality Agreement* between the first respondent and the applicant is common cause. The first respondent disputes that he is in breach of the Confidentiality Agreement. The other respondents also dispute that they have used the applicant's Confidential Information.

[24] With regard to the emails the following is recorded on the answering affidavit at paragraph 90.1 to: 91.2

> "90.1 *It is denied that this email contains any Confidential Information.*
>
> *90.2 At this juncture Sengled was already known to us….*
>
> *90.3 Most of the information which the first respondent provided is recorded on the applicant's packaging. I have caused annexure RK5 to be circled with all the information that is contained on the applicant's packaging including the luminance, output, wattage, colour, temperature, lifespan, dimming capabilities and power factor of its LED globe.*
>
> *90.4 In any event, the product did not suit the second respondent's needs as they were causing certain issues with the second respondent's lighting fixtures."*

91.1...

91.2 The email contains confidential information of the respondents. Bothma and Chapman acted unlawfully in gaining access thereto."

[25] There are disputes between the parties as to how the sixth respondent came to know about Sengled. However, the sixth respondent's assertion that the first respondent did not disclose confidential information is untenable. There was a flurry of emails between the first respondent and the sixth respondent. There is no reason for the first respondent to have sent an email to the sixth respondent advising him *"what to ask for"*, other than that he intended using the information to compete unlawfully with his erstwhile employer.

[26] It was submitted by Counsel for the respondents that there is no evidence that confidential information was ever disclosed to the respondents by the first respondent. The inescapable conclusion, in my view, is that such information was disclosed by the first respondent. Why would the first respondent go to the trouble of sending an email to the sixth respondent giving him the details of what to ask for and further inform him in an email dated 14 January 2019 that *"I only have this one on file, artwork from previous supplier. Box should be the same, suggest we get from Leon their cuts lines to be sure."* In any event, so the respondents argue, the "Confidential information" could easily have been obtained by the respondents by other means.

[27] The respondents claim that the names of the applicant's suppliers and customers on the "A" list are no longer confidential information because the applicant itself disclosed it. There is no merit in this assertion for reasons which will be dealt with in the judgment.

[28] In evaluating the version of the applicant and that of the respondents, the test to be applied is that set out in *Plascon-Evans* case. I am of the view that the version of the respondents is untenable and can simply be rejected on papers. Fact of the matter is that a plethora of applicant's confidential information was acquired by the other respondents through the first respondent. This information is of value to the applicant as it had been acquired after the applicant spent time and money in the process of acquiring it. The information, for example would indicate to the applicant, and by implication to any of its competitors which suppliers of LED premium lamps in China is reputable, pricing schedule, detailed marketing plan and test results of the products.

[29] It is against this background that I am required to determine whether the applicant is entitled to the relief sought and whether its confidential information is worthy of protection. It is not what the applicant saw as worthy of protection that should be protected, but that, objectively viewed, worthy of protection, which the law regards as protectable interest.

APPLICABLE LEGAL PRINCIPLES

[30] It has been accepted in South Africa that an employee may not make use of information which has been entrusted to him in confidence in the course of his work, for purposes of competing with his employer or former employer. In *Seager v Copydex Ltd* 1967 2 All E.R 415 it was held that;

> *"The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not use it to the prejudice of him who gave it without obtaining his consent".*

The essence of the principle is that:

"a person who has obtained evidence in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication...." See *Dun and Brandstreet Pty Ltd V SA Merchants Combined Credit Bureau* (Cape) (Pty) Ltd (1986) 1 All SA 348 (C).

[31] The principal point of departure is whether the applicant has in respect of the respondents any proprietary or protectable interest worthy of protection. As is often the case the proprietary interest the applicant seeks to protect relates to its trade secrets and confidential information and secondly its customer and suppliers.

[32] I accept that confidential information is that which is not in the public domain or public knowledge See *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* [1963] 3 All ER 413 at 415 and *Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano* (Pty) Ltd 1981 2 SA p 173 T at 194. In *Coolair Ventilator Co (SA) (Pty) Ltd v Liebenberg and Another* 1967 (1) SA 686 (W) Marais J said, at 691B:

> *"What would constitute information of a confidential nature would depend on the circumstances of each case, and in this regard the potential or actual usefulness of the information to a rival would be an important consideration in determining whether it was confidential or not."*

[33] The respondents contend that applicant's confidential information is already disclosed to it by the applicant. In *Castricum v Theunnissen and Another* 1993 (2) SA 726 (TPD) the court held that:

> *"What is clear from the aforesaid, is that someone who saves himself the trouble of going through the process of compilation of a document, even where it is compiled from information which is available to anybody, such a person would be interdicted if that information had been obtained in confidence. The reason is simply that confidential information may not be used as a springboard for activities detrimental to the person who made the confidential information available. It would remain a springboard even when all the features have been published*

or can be ascertained by actual inspection by any member of the public."

[34] In my view the evidence considered on the *Plascon-Evans* rule shows that:

34.1 The applicant has an interest in the information acquired by the first respondent.

34.2 The applicant spent considerable effort, time and money to acquire and/or obtain such information.

34.3 The information appropriated was applicant's confidential information.

[35] The first respondent had a contractual relationship with the applicant which imposed a duty on him to preserve the confidence of the information imparted to him during the course of his employment with the applicant and the first respondent knowingly misappropriated that information by disclosing it to the sixth respondent.

[36] In *Waste Product Utilization Pty Ltd V Williams and Another* 2003 (2) SA 575 (WLD), the court dealing with the requirement to establish misuse of confidential information, whether as a springboard or otherwise held as follows at 582 E-H:

"it has already been established that the defendants used the confidential information obtained about the Plaintiff's plant and process. It is useful, nonetheless, to consider also the concept of spring boarding, since the same conduct may constitute both unlawful use of confidential information and the use of that information to gain a springboard in order to compete. "springboard" entails not starting at the beginning in developing a technique, process piece of equipment or product, but using as the starting point, the fruits of someone else's labour. Although the springboard concept applies in regard to confidential information, the misuse of fruits of someone else's labour may be regarded in a suitable case unlawful even where the information copied is not confidential. This was the case in Schultz v Butt 1986 (3) SA 667 (A), where the boat hull designed by the plaintiff and copied by the defendant was found not to be confidential because it was in the public domain, but the copying of it, as a springboard, was regarded as unlawful".

[37] I am satisfied that the applicant has shown that it has a prima facie right over the information and that the applicant has a well-grounded apprehension that the respondents will continue to use the confidential information if not restraint by an interdict and that it has no other satisfactory remedy. It remains to consider if the balance of convenience favours the granting of the final relief or granting of the interim relief.

[38] The rights which the applicant seeks to protect are rights which will be irreparably damaged if the respondents are infringing them and are permitted to continue to do so. The distinctiveness of applicant's products, makes and trading style will be diluted in such a manner that it cannot be ever restored. It is for this reason that the court leans towards granting interim relief as soon as possible in order to preserve those rights undamaged pending the decision of the action.

[39] In my view the difficulties which the applicant will experience if interim relief were to be refused and the applicant is ultimately successful in the main action are illustrated by the situation which has already arisen. The second respondent has traded for many years without having to infringe upon the applicant's rights to its confidential information and or trade secrets. The second respondent is said to have already sourced products from the applicant's supplier Sengled which products are due for delivery early March 2019. How much of this is attributable to the respondents' unlawful conduct and how much of this is legitimate competition will be practically impossible to determine. The first respondent knows who the applicant's customers are. The product can easily be sold to such clients through the vehicle of the second and third respondents. On the other hand, the potential prejudice to the respondents if they are restrained at this stage from using the applicant's confidential information and are ultimately successful in the action seems to me to be substantially less than that apprehended by the applicant. The third respondent has only recently been incorporated and it is very much doubtful if he had traded at all since its incorporation. The effect of the prohibition will not

be to prevent them from trading but, merely from using the applicant's "artwork" and confidential information.

URGENCY

[40] The Court is satisfied that this matter is urgent because of the facts set out herein above. The respondents have given no undertaking that they will not use any of the applicant's confidential information which is unlawfully in their possession. The applicant will not obtain substantial redress against the respondents in the normal course. The first respondent's employment with the applicant terminated at the end of February 2019 and he took up employment with the third respondent already and will continue to use the applicant's confidential information in competition with the applicant.

[41] In light of all the considerations mentioned above, I am of the view that the balance of convenience favours the grant of the interim relief sought.

[42] As to the question of costs, it would in my view be undesirable for me to make a final order as to costs of the present application at this stage since factors may emerge at the trial which could persuade the trial court to exercise its discretion differently.

In the event, I make the following order:

1.The Court dispenses with the forms and service prescribed by the Rules of Court and disposes of this matter as one of urgency in terms of Rule 6(12).

2. Pending the final determination of an action to be instituted in this court by the applicant against the respondents for relief substantially as set out in the notice of motion, the respondents are Interdicted and restrained from:

(2.1) using the applicant's confidential information relating to the applicant's clients and/or suppliers as listed in annexure "A", in any manner, whether directly or indirectly for the purposes of soliciting the business of the applicant its clients and suppliers, competing with the business interests of the applicant;

(2.2) contacting, canvassing, dealing, soliciting or diverting, securing or attempting so to do any existing client or supplier of the applicant and as more specifically listed in annexure "A";

(2.3) any conduct which will have the effect of damaging the client or business relationships of the applicant;

(2.4) copying, transmitting or transcribing, or rendering in usable form, any existing client and supplier data relating to the applicant and as more specifically listed in annexure "A";

(2.5) making available to any other party or entity, whether in digital form or otherwise, any client data or contact information relating to any existing client and supplier of the applicant and as more specifically listed in annexure "A".

3. The first respondent is interdicted and directed forthwith to deliver up to the applicant all documents whether in digital form or otherwise in his possession or control relating to the applicant's business, clients and/or suppliers, representing and/or containing any documents, reports and/or specifications relating to the know-how and/or unique selling points ("*USP*") of the applicant's products, and/or from further disseminating and/or making available to any person including specifically the second, third, fourth, fifth, sixth and seventh respondents same.

4. The second, third, fourth, fifth, sixth and seventh respondents are interdicted and directed forthwith to deliver up to the applicant all documents whether in digital form or otherwise in their possession or control relating to the applicant's business, clients and/or suppliers, representing and/or containing any documents, reports and/or specifications relating to the know-how and/or unique selling points ("*USP*") of the applicant's products, and/or from further disseminating and/or making available to them by the first respondent whether directly and/or indirectly.

5 The first, second, third, fourth, fifth, sixth and seventh respondents are interdicted from using any of the applicant's confidential information and/or

trade secrets and/or pricing structure including client and/or supplier lists, USP and know-how to unlawfully compete with the applicant whether as a springboard or otherwise to advance the business of the second and/or third respondents or any interest either directly or indirectly of the first, second, fourth, fifth, sixth and seventh respondents in the second and third respondents.

6 The second and third respondents are interdicted from employing the first respondent in any capacity whatsoever whether directly or indirectly in the carrying on of the business of the second and third respondents.

7 The second and third respondents are to deliver to the applicant:

7.1 forthwith all documents relating to the ordering, quotation and invoicing by them or received from the applicant's supplier of lighting products ZHEJIANG SHENGHUI LIGHTING CO, LTD t/a Sengled;

7.2 a report to the applicant upon receipt of the lighting product ordered by them from Sengled reflecting the quantity of product received together with product specifications and description supported by all documents exchanged by them with Sengled and in particular bill of lading and/or way bills, or the like;

7.3 an accurate report each month from 31 March 2019 and the end of each succeeding month accounting for all sales, duly supported

by purchase orders, invoices and delivery notes, for the lighting product ordered and received from Sengled.

8. The applicants are to institute the action referred to in para 2 hereof within 30 days from the date of this order, failing which the interdicts in para 2 to 7 hereof will automatically lapse.

9. The costs of this application are reserved for decision by the court trying the said action.

B MAHALELO

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

FOR THE APPLICANT: ADV C B GARVEY (083 701 4215)
INSTRUCTED BY: OTTO KRAUSE INC

FOR THE RESPONDENTS: ADV RUDOLPH (082 347 8398)
ADV PIETERS
INSTRUCTED BY: CHAD JACOBS ATTORNEYS

DATE OF HEARING: 26 FEBRUARY 2019
DATE OF JUDGMENT: 18 MARCH 2019