

SOUTH AFRICA / JUDGMENT

**Fairhaven Country Estate (Pty) Ltd v Harris
and Another (735/2015) [2015] ZAWCHC
100; 2015 (5) SA 540 (WCC); [2015] 3 All SA
618 (WCC); 2015 BIP 506 (WCC) (8 July 2015)
[2015] ZAWCHC 100**

COURT

Western Cape High Court, Cape Town

BEFORE

Henney

CASE / FILE NUMBER

735/2015

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE DIVISION, CAPE TOWN)
CASE
NO: 735/2015

DATE:

08 JULY 2015
[REPORTABLE]
In

the matter between:

FAIRHAVEN
COUNTRY ESTATE (PTY)
LTD.....Applicant
And
SHAUN
HARRIS.....First
Respondent
G
STUDIO BRANDING AGENCY (PTY) LTD
t/a
G STUDIO BRANDING AGENCY WESTERN
CAPE.....Second
Respondent

JUDGMENT

DELIVERED ON 8 JULY 2015

HENNEY, J:

Introduction

and Background

- [1] The case is concerned with the ownership of and rights associated with the use of a domain name[1].

The applicant is Fairhaven Country Estate (Pty) Limited which carries on business as the developer of a residential estate known as the Fairhaven Country Estate which is located in Somerset West.

- [2] The first respondent is Shaun Harris, an estate agent who carries on business as the sole member of Finman 119 CC trading as Schonenberg Real Estate (“Finman”) and who resides in Heldervue, Cape Town.
- [3] In this application the applicant seeks an order against the first respondent interdicting him from instructing the second respondent or in any way attempting to redirect or transfer the domain names fairhavenestate.co.za, fairhaven.co.za, fairhavencountryestate.co.za, fairhaven-country-estate.co.za and fairhaven-estate.co.za (“the domains”) to Fine and Country or to any third party other than the applicant and compelling him to take all steps to ensure that registration of the domain names is transferred to the applicant (the applicant tendering the reasonable costs of doing so).

Facts

Underpinning this application

- [4] On 28 July 2011 first respondent effected the registration of the domain name “fairhavenestate.co.za” as well as “redirect” domains fairhaven.co.za. He also registered further domain names under “Fairhaven” at a later stage.
- [5] First Respondent states that he caused the said domain names to be registered during 2011 “before the applicant appeared on the scene” and that at the time the Fairhaven Country Estate development formed part of the Nedbank Limited distressed property portfolio. He claims that he registered the domain names because he appreciated that possession of the exclusive right to use the domain names would assist him to obtain a mandate from Nedbank Limited (or any successor-in-title) to market and sell the properties forming part of the development. The applicant thereafter purchased the development from Nedbank Limited.

- [6] In or about the second half of 2012, Mr Otto Wiehahn, a businessman and entrepreneur with a large portfolio of properties in the Western Cape, was approached by the father of the first respondent, David Harris (“Harris”), who suggested to Wiehahn that he invest in a shelf company held by Harris which would be utilized to acquire a failed development known as “Fairhaven” in Somerset West which had been rezoned for development purposes and in respect of which certain (but not all) services had been installed.
- [7] David Harris later interposed his son Shaun, the first respondent, to deal with the matter.
- [8] Wiehahn was not amenable to injecting finance into an investment vehicle owned by Harris and he accordingly utilized a shelf entity known as Proventus Three (Pty) Limited which purchased the Fairhaven property in the second half of 2012. On purchasing the property, this entity changed its name to that of the applicant, Fairhaven Country Estate (Pty) Limited. It is important to note at this stage that neither first respondent nor his father, nor any of their entities, have owned shares in applicant.
- [9] An arrangement was concluded between the applicant and Harris with regard to the sales and marketing of the 205 unimproved plots in the development, which sales commenced in September 2012.
- [10] In order to put into place the arrangement in regard to the marketing of the development, the applicant, in conjunction with Harris, acquired a special purpose vehicle to market the plots. The name of this entity was changed to Summer Club Real Estate (Pty) Limited (“Summer Club”) with 50% of its shareholding being held by Wiehahn’s management company, Proventus, and the balance held by a trust, whose trustees included first respondent.
- [11] Summer Club was granted sole mandate to sell plots on the estate and it in turn granted a submandate to an entity known as Finman 119 CC (Finman), which close corporation was wholly owned and controlled by the first respondent, in respect of the sale of the undeveloped plots on the Estate based on an agreed commission structure.
- [12] For reasons not relevant to this application, the mandate of Summer Club was cancelled on 5 May 2014. Negotiations ensued between the applicant and Proventus on the one hand and Summer Club and Finman on the other as to the financial implications of the cancellation of the mandate and on 22 May 2014, an agreement was concluded with regard thereto. The terms of the agreement were implemented and all commercial relationships were terminated between the entities that is the applicant and Proventus on the one hand, and the Avodah Trust (and its Trustees), and Finman on the other hand.
- [13] On 15 January 2015, the applicant’s sole director Zane De Decker received an email from one, Jan Hofmeyr, a representative of the second respondent, G Studio Branding Agency (Pty) Ltd, wherein he informed the applicant that they had received an email from the first respondent requesting the transfer of the domain www.fairhavenestate.co.za to the first respondent (which was registered and belongs to Shaun Harris). In this email, the second

respondent informed the applicant that this affected the marketing of Fairhaven Estate and that it would need to act promptly to register a new domain for all the applicant's marketing material to function. He further informed the applicant that there was a 24 hour window before this would be active and it meant that all emails as well as the website would be down. This was the first time that the applicant became aware of the fact that the first respondent registered the domain name on his name.

- [14] This prompted the applicant to seek legal advice. A letter was addressed to the first respondent, wherein the applicant states that after the relationship between it and the first respondent and the entities he represented (had come to an end, the applicant's existing website, under the domain of www.fairhavenestate.co.za continued to operate, being conducted and maintained through the applicant's duly appointed marketing agent Jan-Hofmeyr trading

as "G-Studio". The applicant further informed the first respondent that the domain constitutes the vehicle from which all marketing in respect of Fairhaven Estate is conducted and through which all email traffic (both send and received) relating to marketing of the Estate is channelled.

- [15] It is also common cause that while first respondent paid the initial registration fee, the applicant paid the costs for the development and renewal of the domain and the upgrade and operation of the website connected to such domain.
- [16] It is common cause that the said domain names were registered before the applicant was registered as a company. It was registered at the time when the Fairhaven Country Estate development formed part of the Nedbank Limited distressed property portfolio.
- [17] It is also common cause that at the time when the business relationship between the applicant and the first respondent came to an end, the first respondent had never informed the applicant that the domain names were registered in his name. The first respondent contends that there was no need for him to inform the applicant that the domains belonged to him.

- [18] It also emerged and it is common cause that the first respondent's sister is in the employment of a real estate company, Fine and Country. The first respondent admits that he requires the re-direction^[2] of the active domain Fairhavenestate.co.za to use it in the performance of resale mandates in terms of which he had to sell existing properties that were up for sale in the Fairhaven Estate. He holds such resale mandates with an aggregate market value of approximately R23 million and according to him the importance and value of the domain name to him is self-evident. It is common cause that on 28 July 2011 the first respondent registered two internet domain names ("domain names") in his name in relation to Fairhaven Estate, namely, Fairhavenestate.co.za ("active domain") and Fairhaven.co.za. And on 2 November 2011 Fairhavencountryestate.co.za was registered. On 27 June 2014 Fairhaven-country-estate.co.za as well as Fairhaven-estate.co.za were also registered.

THE APPLICANT'S CASE

- [19] The applicant contends that it had maintained and operated the active domain (Fairhavenestate.co.za) as well as paid the costs associated therewith it conducted its marketing website and through such domain, channelled all the email traffic (both sent and received) relating to the marketing of the estate (Fairhaven). And he further argued that even though the first respondent is the registrant, he is not the owner of such domain. The applicant in respect of such submission relies on the Wikipedia website definition of owner of a domain. The relevant quote reads “often, this transaction is termed a sale or lease of the domain name, and the registrant may sometimes be called “owner”, but no such legal relationship is actually associated with the transaction, only the exclusive right to use the domain name. More correctly, authorised users are known as “registrants” or as “domain holders”.
- [20] The applicant contends that had it known from the outset that the first respondent was the registrant of the domains and would seek to exploit them in due course, it could have renamed the estate at the very beginning before investing so much into the brand, or could have insisted that the first respondent cede away the right to the domain names which he may have had, before entering into a profit sharing agreement with the first respondent.
- [21] The applicant has to date spent R1,75 million on direct advertising (all of which includes the domain) and currently spends an average of R50 000,00 per month on promoting its brand, while the total amount spent on the Fairhaven project as a whole is in the region of R70 million rand. The applicant argued that the suggestion by the first respondent that the domains were used by the applicant with his consent cannot be accepted because the applicant never sought his consent nor was any such consent granted. The applicant contends that this was for the simple reason that the applicant did not consider first respondent or any person other than it to have any right to the use of the domains and, in particular, the active domain. The applicant did not know that the first respondent was the registrant of the relevant domain names and was never informed of this fact. Other than the nominal costs of registering the domain, which the first respondent never sought at any stage from the applicant, all the costs pertaining to the renewal of the domain and the hosting costs in this regard were paid by the applicant. The applicant would not have done this had the first respondent asserted his claims to the domains concerned during the existence of their relationship.
- [22] The applicant further submitted that the first respondent, in not asserting any claim to the domains and allowing the appellant to use and to pay for the domains and the website which operated therefrom, waived any claims to the domain names in favour of the applicant.

[23] The applicant further argued that should the active domain be transferred to the first respondent, he would have full access to all the emails on the domain and any future emails addressed to such domain. This would leave the applicant in a position where it would have no access to or control over such emails and it would have no way of knowing of their existence.

[24] The applicant contends that the active domain is part and parcel of the applicant's "get up and promotional material"

which it developed over the past 3 years at great expense. According to the applicant it appears on every billboard, leaflet and every document associated with it and it is on its website. It is part and parcel of the identity of Fairhaven Estate and part of the "DNA" of the brand and is synonymous with its identity. The applicant argues that the first respondent's

contention that he requires the domain name to assist it in the performance of resale mandates confirms that clients who would seek contact with the applicant through its website will as a result of this be redirected without their knowledge to a rival agency.

This will result in the applicant being deprived of its customers and it would instead put the first respondent in contact with the very customers who would be seeking to do business with the applicant through its website. According to the applicant, this would in the circumstances amount to unlawful competition.

[25] The applicant therefore argues that it has satisfied the requirements for final relief in the form of an interdict in the following

respects:

1. It has established that it has a clear right (being the right to prevent what amounts to unlawful competition on the part of the first respondent).
2. An injury had actually been committed or reasonably apprehended (being the loss to the applicant of its goodwill and business to the unjustified benefit of the first respondent).
3. There is an absence of any satisfactory alternative remedy available to the applicant (especially in the light of the fact that the mere establishment of another domain will not assist the applicant, but rather contribute to and consolidate its prejudice).

[26] THE RESPONDENTS' CASE

The first respondent argued that all the domain names were registered in his name on the "WHOIS"[3] protocol on the dates as mentioned earlier. He further paid for such registration. He contends that he as registrant of a domain is the "owner" thereof and enjoys the rights of exclusive use thereof. The applicant in the light of these facts cannot claim to have established any right to interdict him from causing his own domain name to be transferred and redirected to another website of his choice or to a third party and to prevent him from registering further domain names. The applicant cannot also compel him to cause his (First Respondent's) domain

names to be registered in the applicant's name as being owned by the applicant on the basis that it (the applicant) has a right to protect the goodwill and work embodied in the website which operates from the domain and to prevent the first respondent from having access to its intellectual capital.

[27] The respondent argues the difficulty that faces the appellant is that he (First Respondent) is the owner of the domain names or at the very least, the holder of the exclusive rights thereto. According to the first respondent, the domain names form part of his estate or patrimony. The first respondent argues that his right trumps the applicant's rights in and to its goodwill, intellectual property, website and emails that it may have which he has no interest in. According to him these rights of the applicant cannot in law justify the effective expropriation of his (First Respondent's) property in favour of the applicant. This is what the applicant is effectively seeking in his Notice of Motion. This is a violation of his right of property in terms of sec 25 of the Constitution Act 108 of 1996.

[28] The other difficulty the first respondent has with the applicant's case is that the applicant does not own the name "Fairhaven"

or otherwise enjoy any right to the exclusive use or protection thereof (in the form of copyright or a registered trademark).

The applicant accordingly, has no right to demand that the first respondent (or any other person) should refrain from using the name "Fairhaven" or from registering it as a domain name in conjunction with the other words.

[29] The applicant according to the respondents cannot seek interdictory relief to protect its goodwill and work product embodied in the website, because such interdictory relief cannot prevent the first respondent or any party from accessing its website or emails or any other aspect of its own work and productivity. The applicant in this case cannot seek such protection because there is no danger that the first respondent who has no interest therein, will attempt to access it. According to the first respondent, the applicant under the guise of an attempt to protect its goodwill, is attempting to assert rights to an unregistered name to which it enjoys no exclusivity whatsoever.

[30] The first respondent further holds that the further argument of the applicant, that the first respondent somehow concealed the fact that the domain names are registered in his names lacks any merit, because the first respondent has been the registrant of the domain names on the WHOIS protocol (which is a public registry) throughout. Furthermore, it is also clear that the second respondent throughout acted as the applicant's agent. The first respondent therefore contends that he never, whether by words or conduct, indicated that he waived or abandoned his rights as registrant of the domain names in favour of the applicant. The assertion therefore of the applicant that the first respondent has waived or abandoned his rights in favour of the applicant or should be estopped from denying that he did so falls to be dismissed.

[31] According to the first respondent, the applicant still has an option to register a new domain name for itself (which also contains the word “Fairhaven”) in any combination with any other words, except that he may not register the specific combinations

registered by the first respondent.

[32] ISSUES FOR CONSIDERATION

The following issues stand to be considered:

1) Whether the applicant has an exclusive right to use the domain fairhavenestate.co.za (active domain) and other domain names which

may exist in the name of or pertaining to Fairhaven Country Estate or domain names containing the name “Fairhaven”.

2) And if so, whether the respondents use or intended use thereof, may result in passing off.

[33] EVALUATION

The Interdictory Relief that the applicant is seeking is based on the fact that the respondent would by claiming the domain names for his exclusive use, commit the delict of passing off. It would therefore be useful to once again look at what a party needs to show to be successful in a claim of passing off. In “Century City Property Owners' Association v Century City Apartments Property Service CC 2008 JDR 1420 (C) it was held “Thus, in order to succeed in a passing-off action based upon an implied representation it is generally incumbent upon the Plaintiff to establish, inter alia: firstly, that the name, get-up or mark used by him has become distinctive of his goods or services, in the sense that the public associate the name, get-up or mark with the goods or services marketed by him (this is often referred to as the acquisition of reputation); and, secondly, that the name, get-up or mark used by the Defendant is such or is so used as to cause the public to be confused or deceived in the matter described above. These principles are trite and require no citation of authority”.

Further, in Pioneer Foods (Pty) Limited v Bothaville Milling (Pty) Limited 2014 JDR 0477 (SCA) it was held:

“[7] There is no dispute over the relevant legal principles. Passing off occurs when A represents, whether or not deliberately or intentionally, that its business, goods or services are those of B or are associated therewith. It is established when there is a reasonable likelihood that members of the public in the marketplace looking for that type of business, goods or services may be confused into believing that the business, goods or services of A are those of B or are associated with those of B. The misrepresentation on which it depends involves deception of the public in regard to trade source or business connection and enables the offender to trade upon and benefit from the reputation of its competitor.

Misrepresentations of this kind can be committed only in relation to a business that has established a reputation for itself or the goods and services it supplies in the market and thereby infringe upon the reputational element of the goodwill of that business. Accordingly proof of passing off requires proof of reputation, misrepresentation and damage. The latter two tend to go hand in hand, in that, if there is a

likelihood of confusion or deception, there is usually a likelihood of damage flowing from that."

It is clear that on 28 July 2011 when the first respondent registered the domain name "fairhavenestate.co.za" as well as "redirect" domains in the names of fairhaven.co.za and fairhavencountryestate.co.za the applicant as an entity was not in existence. The registration of the above domain names was aimed at assisting the first respondent in acquiring a mandate to market and sell the properties situated in Fairhaven Country Estate. The registration of the domain names was therefore directly linked to the name of the estate or the property which belonged to Nedbank at that stage, namely, the Fairhaven Country Estate Development.

- [34] The name was therefore not inextricably linked to the first respondent but to the property belonging to another party. It was not something that was or in any way connected to the first respondent. On the first respondent's own version, the purpose of the registering of the domain names was to assist it marketing and selling properties on behalf of either Nedbank or its successor [s] in title, currently the applicant. At the time of registering it, the first respondent could not attach any value to the domain name. Only were he himself to acquire a connection or link to the property whose name was associated with the domain names he registered, could he do so. The only connection at the time between the first respondent and the domain names was the fact that he was the person responsible for the registration thereof.
- [35] It is irrelevant that the domain names were registered and acquired by the first respondent before the applicant came into existence. Prior to its association with the applicant, quite simply, from the perspective of the first respondent, such domain names could hold no value. At such time, these domain names would not have linked any person with Fairhaven Estate. It was only after the applicant came into existence and after it gave the first respondent the mandate to market and sell its properties, that value became attached to the domain names. Yet such value attached to the applicant in that the domain names formed part and parcel of the applicant's get up and promotional material.
- [36] The first respondent also never during this time made the applicant aware of the fact that he owned the domain names and that they were for his exclusive use. In fact he permitted the applicant to use the active domain name for its (applicant's) benefit. During this time the applicant spent an amount of R1,75 million as direct advertising and an average of R50 000,00 per month on promoting its brand. The applicant alone spent a total of R70 million on marketing and selling properties on the Fairhaven Estate. The active domain name is part and parcel of the applicant's get up and promotional material which it has developed over a period of 3 years. The active domain name appears on every bill board, every leaflet and every document as commissioned by it and its website. It is part and parcel of the identity and goodwill of Fairhaven Estate. The domain name acquired value thanks only through its association with and due to the efforts of the applicant. Such value clearly fell to the applicant; as far as the outside world is concerned, such domain names are linked to the applicant.

[37] The applicant in my view clearly established an inextricable link between the domain names and its name, even though the first

respondent was responsible for the registration thereof. I do not agree with the first respondent's claims that as the owner of the domain names he has the exclusive rights of use thereto and that the applicant's rights in and to its goodwill, and intellectual property cannot trump his proprietary right in this domain name. It is my view that the mere registration of the domain name that was linked to the property which belonged to someone else, cannot result in having exclusive right to the use of that domain name.

[38] The first respondent took the step of registering the domain names because he felt that owning them would facilitate his obtaining

mandates from Nedbank Limited or its successors in title to market and sell properties forming part of the Fairhaven development.

It was however never his intention, and this is borne out by his subsequent conduct [as set out in the previous paragraphs], that such domain names would be attached to his own name or his own business, or be used for marketing his own business or services; such domain names would always be used by the owner of the development, and would be exclusively for their benefit. And it is my view that by his conduct he abandoned any right to the exclusive use of the domain names. In the above respects, it is irrelevant that the domain names were registered in the name of the first respondent.

[39] The first respondent raises the issue that the applicant does not own the name Fairhaven or otherwise enjoy any exclusive use or protection thereof in the form of copyright or a registered trademark. However, it is well-established in law that the owner of an unregistered trade-mark is entitled to enforce it with a passing off action if the requirements for passing off have been met. This position was confirmed by Harms DP in the matter of *Turbek Trading CC v A and D Spitz and Another* [2010] 2 All SA 284 SCA at para 11:

"I have already explained that the purpose of the provisio[4] is to confirm that the Act did not abolish the principles of passing-off, meaning in context that the owner of a common-law or unregistered trade mark is entitled to enforce it with a passing-off action."

[40] It must also be noted that there is support for the view that the adoption of a domain name may amount to passing off. Webster and Page; South African Law of Trademarks, Unlawful Competition, Company Names and Trading Styles 4ed at 15.26.17 says:

"It is conceivable that a competitor could engage in passing off by adopting as a domain name, a mark of another which enjoys a reputation. It has been held that the placing on the internet register of a distinctive name made a representation to persons who consulted the register that the registrant was connected or associated with the name registered and thus the owner of the goodwill in the name. The registration of such a distinctive name as a domain name was an erosion of the exclusive goodwill in the name which damaged or which was likely to damage the owner of the goodwill."

See also *Telestream Communications (Pty) Ltd v Halo Mobile (Pty) Ltd* 2013 JDR 1647(GSJ) where at para [15] it was held:

[15] A further and central point in this matter concerns passing off in respect of domain names. There is little doubt in my view that the similarity of domain names may result in passing off, and the normal principles should apply. It has already been held that the mere registration of a domain name of a well-known company was an actionable passing off.” (emphasis added)

This position has also been confirmed in other jurisdictions. See the case of *British Telecommunications Plc v One in a Million* [1999] FSR 1 and *Global Projects Management Ltd v Citigroup Inc & Ors* [2005] EWHC 2663 (Ch) (17 October 2005) with regards to the position in England; *CSR Limited v Resource Capital Australia Pty Limited* [2003] FCA 279 with regards to the position in Australia. Careful consideration should however be given to the basis on which it was found in these cases that passing off had been proven or shown to exist[5].

[41] I am also not convinced by the argument that the applicant can quite easily register a new domain name for itself which also contains the word “Fairhaven” in any combination with other words it pleases, save the specific combinations registered by the first respondent, for the following reasons:

41.1 It is difficult to understand how the possible use by the applicant, as a domain name, of the words, “Fairhaven” together in any combination with any other words addresses the accusation that the first respondents’ use of the domain names in dispute would link or associate the first respondent with the applicant.

41.2 Secondly, it is the first respondent’s intention to compete with the applicant to sell and market properties within that same estate and to use the domain names exclusively for that purpose. In such a situation, it would not be difficult for any ordinary person to confuse the business of the first respondent with that of the applicant, if the first respondent were to be permitted to use the domains that were once used by the applicant or domain names associated with the applicant.

[42] HAS THE APPLICANT MET THE REQUIREMENTS FOR FINAL RELIEF

In this particular case although the first respondent intends to use the domain names, he has not as yet made any representation that the domain name of the applicant is his or that the domain name is associated with his business. Although in my view the other elements of passing off has been proven in that the name, Fairhaven, has become distinctive of the goods and services of the applicant and that the public would associate the domains that the first respondent intends using with that of the applicant.

[43] The applicant has also shown that its business has goodwill which is associated with the name Fairhaven and that its reputation would in all likelihood be damaged should the first respondent be allowed to continue to use such domain.

[44] In my view, however, in this case, while there has been no representation or misrepresentation as yet by the first respondent,

there is a clear intention that he intends passing off his business as being that of the applicant. The applicant therefore is entitled to interdictory relief in that there is a threatened infringement of the applicant's clear right where it need not wait for the actual infringement to occur. It is therefore entitled to approach the court to restrain the threatened conduct[6]. I am satisfied that the applicant has satisfied the requirements for such relief. Firstly, the applicant has established that it has a clear right to the protection of its goodwill and reputation of which the name, Fairhaven form part.

[45] Secondly, it is clear that the first respondent intends to use the domain name in direct competition with the applicant, to sell and market properties within the same estate in which the applicant operates. There is clear evidence that the harm the applicant seeks to prevent is reasonably apprehended.

[46] Lastly, I am satisfied that the applicant has no other adequate remedy other than to avail itself of the assistance of this court to protect itself against the first respondent.

[47] In the result therefore, I make the following order:

- 1) That the first respondent is interdicted from instructing the second respondent or in any way to attempt to redirect or transfer the domain names fairhavenestate.co.za, fairhaven.co.za, fairhavencountryestate.co.za, fairhaven-country-estate.co.za and fairhaven-estate.co.za to Fine and Country or to any third party other than the applicant.
- 2) That the second respondent is compelled to take all reasonable steps to ensure that the registration of the domain names mentioned above is transferred to the applicant for which the applicant will pay the reasonable costs of doing so.
- 3) That the first respondent is interdicted from registering or attempting to register any further domains containing the name "Fairhaven" in future.
- 4) That the first respondent is ordered to pay the costs of this application.

HENNEY, J

Judge of the High Court

[1] Each computer connected to the internet has an Internet Protocol (IP) address in the form of a unique number. Through this

number computers locate other computers. We as human beings rather prefer to use names rather than numbers to find computer

sites on the internet. The "Domain Name System (DNS)" effectively serves as an electronic "phone book" by translating domain names (for example, www.google.com) into IP addresses. The Domain Name System makes it possible for computer users to enter www and e-mail

addresses linked to particular pages and persons they seek into their internet browsers and emails without having to know on which particular computer the page or person is hosted. A domain name constitutes of one or more parts that are separated by dots, such as www.google.com.

- [2] Re-directed from the Fairhaven IP address to the First Applicant.
- [3] This is an Internet service that finds information about a domain name or IP address. If you enter a domain name in a WHOIS search engine, it will scour a huge database of domains and return information about the one you entered. This information typically contains the name, address, and phone number of the administrative, billing, and technical contacts of the domain name. WHOIS can also be used to simply check if a certain domain name is available or if it has already been registered. Definition as per techterms.com.
- [4] With reference to the Trade Marks Act; Act 194 of 1993.
- [5] On the basis of the so-called “Extended Passing Off”. See “Saunders, Katharine – “Choccosuisee – The New ‘Extended Extended’ Passing Off” [2001] VUWLawRw 13; (2001) 32(1) Victoria University of Wellington Law Review 351; See also the discussion of Webster (supra) at 15.6 under the heading South African and English Law compared; and Lorimar Productions Inc v Sterling Manufacturers (Pty) Ltd 1981 3 SA 1129 (T).
- [6] See Herbstein and Van Winsen 5ed Vol 2 – Civil Practice of the High Court of South Africa at 1465. See also Telestream Communications Pty (Ltd) v Halo Mobile Pty (Ltd) supra; See Amlers Precedents of Pleadings 7ed Edition at page 314.

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