

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

" X "
02/02/2024


Before the Honourable ACTING JUDGE PRESIDENT GOLIATH

CAPE TOWN: 02 February 2024

Case no.: 10278/2023

In the matter between:

**TERTIARY EDUCATION AND RESEARCH NETWORK
OF SOUTH AFRICA (RF) NPC**

Applicant

and

TENET TECHNOLOGY (PTY) LTD

First Respondent

NATIONAL STUDENT FINANCIAL AID SCHEME

Second Respondent

**COMMISSIONER OF THE COMPANIES AND
INTELLECTUAL PROPERTIES COMMISSION**

Third Respondent

.ZA REGISTRY CONSORTIUM (PTY) LTD

Fourth Respondent

UKHESHE TECHNOLOGIES (PTY) LTD

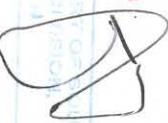
Fifth Respondent

LORALITE (PTY) LTD

Sixth Respondent

~~DRAFT ORDER~~


2024-02-09
WCD-008
Private Bar X9024
Private Bar X9024, Cape Town 8000

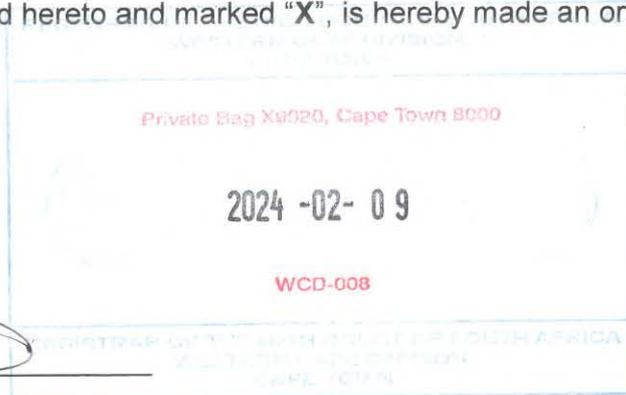

2024-02-09
WCD-008
Private Bar X9024, Cape Town 8000

Having considered the note filed by the Applicant, the email from Mr Nike Pillay of Nike Pillay Inc. (who represents the First, Fifth and Sixth Respondents) and the settlement agreement concluded, by agreement between the parties, the settlement agreement attached hereto and marked "X", is hereby made an order of Court.

BY ORDER OF THE COURT



COURT REGISTRAR



Von Seidels
Applicant's Attorneys
Central Park on Park Lane
Century City
Cape Town
Ref: TL2605ZA00/HP
Box No.: 8

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02/02/2024
[Signature]

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION CAPE TOWN)

Case no.: 10278/2023

In the matter between,

TERTIARY EDUCATION AND RESEARCH NETWORK OF SOUTH AFRICA (RF) NPC Applicant

and

TENET TECHNOLOGY (PTY) LTD First Respondent

NATIONAL STUDENT FINANCIAL AID SCHEME Second Respondent

COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION Third Respondent

.ZA REGISTRY CONSORTIUM (PTY) LTD Fourth Respondent

UKHESHE TECHNOLOGIES (PTY) LTD Fifth Respondent

CORALITE (PTY) LTD Sixth Respondent

SETTLEMENT AGREEMENT

1. DEFINITIONS

In this agreement, unless indicated to the contrary, the following words and phrases shall have the meanings assigned to them:

Certified a true copy of the original which has no noticeable evidence of alterations by an unauthorised person.
Gesertifiseer 'n ware afskrif van die oorspronklike waarop geen algemene veranderings deur 'n ongemagtigde persoon aangebring is nie.
[Signature]
LANDDORP MAGISTRATE
REGISTRAR OFFICER

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2024 -02- 09
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WESTERN CAPE HIGH COURT

RP *[Signature]*

- 1.1 **Dispute** shall mean the dispute between the parties as described in clause 2.1;
- 1.2 **Applicant**, shall mean Tertiary Education and Research Network of South Africa (RF) NPC, a South African non-profit company incorporated under registration number 2000/020780/08, with its principal place of business at Wynberg Mews, Corner of Ebenezer and Brodie Roads, Wynberg, Western Cape;
- 1.3 **First Respondent**, shall mean Tenet Technologies (Pty) Ltd, a South African company incorporated under registration no. 2013/158012/07, with its principal place of business at Block H, 35 Intersite Avenue, Umgeni Business Park, Durban, KwaZulu-Natal;
- 1.4 **Second Respondent**, shall mean National Student Financial Aid Scheme ("NSFAS"), a legal entity established in terms of the National Student Financial Aid Scheme Act 56 of 1999, with its principal place of business at The Halyard, 4 Christiaan Barnard Street, Cape Town, Western Cape;
- 1.5 **Third Respondent**, shall mean the Commissioner of the Companies and Intellectual Property Commission ("CIPC"), appointed in terms of

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Rally
LANDDPOS/MAGISTRATE
REGISTRAR/JURIFISER

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG 9001
CAPE TOWN 8000
2024 -02- 09
REGISTRAR 2
WESTERN CAPE HIGH COURT

RP [Signature] →

Section 189 of the Companies Act 71 of 2008, with its principal place of business at DTIC Campus, Block F Entfufukweni, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

- 1.6. **Fourth Respondent**, shall mean .ZA Registry Consortium (Pty) Ltd ("ZACR"), a South African company incorporated under registration no. 2022/706278/07, with its principal place of business at CO.ZA House, Gazelle Crescent, Corporate Park, Midrand, Gauteng;
- 1.7. **Fifth Respondent**, shall mean Ukheshe Technologies (Pty) Ltd, a South African company incorporated under registration no. 2017/471522/07, and its principal place of business at 1st Floor, Golfers Corner, Design Quarter, Fourways, Gauteng;
- 1.8. **Sixth Respondent**, shall mean Coralite (Pty) Ltd, a South African company incorporated under registration no. 2010/007439/07, with its principal place of business at 1st Floor, Liberty Life Building, 21 Aurora Drive, Umhlanga, KwaZulu-Natal;
- 1.9. **The Respondents**, shall mean the First, Second, Third, Fourth, Fifth and Sixth Respondents;
- 1.10. **The Primary Respondents**, shall mean the First, Fifth and Sixth Respondents;

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 Gesertifiseer 'n ware afskrif van die oorspronklike waarna geen bewys van veranderings deur 'n ongemagtigde persoon aangewys is nie.

[Signature]
 LANDDRENS/MAGISTRATE
 REGISTRAR, CAPETOWN

OFFICE OF THE CHIEF JUSTICE
 PRIVATE BAG X9020
 CAPE TOWN
 2024 -02- 09
 REGISTRAR 2
 WESTERN CAPE HIGH COURT

- 1.11. **The Parties**, shall mean the Applicant and the Primary Respondents.
- 1.12. **The Court**, shall mean the Western Cape Division of the High Court of South Africa;
- 1.13. **Tribunal** shall mean the Tribunal of the Registrar of Trade Marks;
- 1.14. **Interim Order** shall mean the interim order by agreement between the Parties handed down by the Court on 7 August 2023, a copy of which is annexed hereto as Annexure "A";
- 1.15. **TENET trade marks** shall mean trade mark registration nos. 2010/18214-17 **TENET** in classes 37, 38, 41 and 42 in the name of the Applicant; and
- 1.16. **TENET TECHNOLOGY application** shall mean trade mark application no. 2022/25158 **TENET TECHNOLOGY** in class 36 in the name of the First Respondent.

2. PREAMBLE

- 2.1. The Applicant and the Respondents have been involved in a legal dispute before the Court under case no. 10278/2023;
- 2.2. Only the First and Sixth Respondents elected to oppose the

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[Signature]

LANDROOS/MAGISTRATE
REGISTRAR OFFICER

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000

2024 -02- 09

REGISTRAR 2
WESTERN CAPE HIGH COURT

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proceedings brought by the Applicant.

- 2.3 The Parties agreed to interim relief on 28 July 2023 the terms of which are set out in the Interim Order;
- 2.4 The Parties would like to conclude the matter with finality and have agreed, without any admittance of guilt, to amicably settle the abovementioned Dispute on the terms as recorded herein;
- 2.5 The Parties have further agreed that this settlement agreement shall be made an order of Court.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

3. TERMS OF SETTLEMENT

3.1. The Primary Respondents will cease any and all use of any mark that incorporates the word **TENET** in relation to financial services, information technology, data processing and digitized business and payment solutions in the context of post-schooling education and training within a reasonable phase-out period of 12 (twelve) from the date of the Interim Order, i.e. by 7 August 2024; ^{DS} twelve months MSS

3.2. Notwithstanding clause 3.1 above, the Primary Respondents are allowed to use the mark **TENETECH** (expressed as one word), including

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Geweekstseël 'n ware afskrif van die oorspronklike waard geen algemene veranderings deur 'n ongemagtigde persoon aangebring is nie.

[Signature]

LINDSAY MACINTYRE
REGISTRAR GENERAL

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000 ^{DS} MSS

2024-02-09

REGISTRAR 2

WESTERN CAPE HIGH COURT

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the domain names tenetech.co.za and nsfas.tenetechtechnology.co.za/SA, provided that the aforementioned domain names do not resolve to websites or applications that contain consumer-facing usage of TENET and / or TENET TECHNOLOGY. For the avoidance of doubt, references to the aforementioned domain names include any sub-domains thereof;

3.3. During the phase-out period mentioned in clause 3.1 above, the First Respondent will not order or print any new bank cards bearing any TENET-incorporating trade marks, with the exception of TENETECH (expressed as one word);

3.4 After the expiration of the phase-out period mentioned in clause 3.1 above, the Sixth Respondent undertakes to cancel the domain name tenetnsfas.co.za which currently stands in its name;

3.5 The Parties mutually agree to take all reasonable steps to avoid creating confusion between their respective businesses and to address existing confusion already caused between their respective marks; and

3.6. The Applicant undertakes to withdraw its threat of opposition to the TENET TECHNOLOGY application before the Tribunal within 5 [FIVE] days from the effective date hereof.

4. EFFECTIVE DATE

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Geverifieer 'n ware afskrif van die oorspronklike waarna geen sigbare veranderinge deur 'n ongemagtigde persoon aangebring is nie.
[Signature]
LAW OFFICES OF THE ATTORNEY GENERAL
REGISTRAR OF COMPANIES

DS
OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG 29020
CAPE TOWN 8000
2024 -02- 09
REGISTRAR 2
WESTERN CAPE HIGH COURT

4.1 This Agreement shall, irrespective of when it is made an order of Court come into effect upon signature of the First Respondent.

5. COSTS

5.1. Each party shall bear their own legal costs herein.

6. ENTIRE AGREEMENT

6.1. This agreement constitutes the entire agreement. No variation or amendment of any of the provisions of this agreement shall be of any force and effect unless reduced to writing and signed by the parties hereto, or varied by any competent court.

6.2. No relaxation or indulgence that any party may grant to another shall constitute a waiver of the rights of that party, and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in the future.

6.3. The Parties agree that this agreement shall be of full force and effect and shall be binding on their respective successors in title, heirs, executors, administrators and assignees and associated and/or subsidiary companies.

7. FULL AND FINAL SETTLEMENT

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Rally
DARREUS DE MAJISTRATE
REGISTRAR GRIFFIER

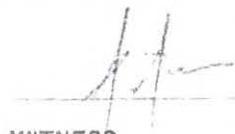
OFFICE OF THE CHIEF JUSTICE
PRIVATE SAC x9130
CAPE TOWN 8000
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REGISTRAR 2
WESTERN CAPE HIGH COURT

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

SIGNED AT Cape Town THIS 24th DAY OF DECEMBER 2023



On behalf of TERTIARY EDUCATION AND RESEARCH NETWORK OF SOUTH AFRICA (RF) NPC



WITNESS

By the authorised undersigned officer, who warrants that he is so authorised.

Name of signatory Duncan Greaves

Capacity: Chief Executive Officer

SIGNED AT Durban THIS 9th DAY OF DECEMBER 2023



TENET TECHNOLOGIES (PTY) LTD



WITNESS

By the authorised undersigned officer, who warrants that he/she is so authorised:

Name of signatory: RYAN PASSMORE

Capacity: Managing ~~Director~~ Executive

Certified a true copy of the original which has no noticeable evidence of alterations by an unauthorised person.
Geskondeur in waar afskrif van die oorspronklike wa trou getuig digitaal veranderings of ander ongemagtigde persoon aangebring is nie.

MAGISTRATE
FREDERICK GRIFFIN

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2024 -02- 09
REGISTRAR 2
WESTERN CAPE HIGH COURT

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SIGNED AT WORTINGHAM THIS 15 DAY OF DECEMBER 2023

DocuSigned by:
Mike Smits
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DocuSigned by:
Chante Jardim
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UKHESHE TECHNOLOGIES (PTY) LTD

WITNESS

By the authorised undersigned officer,
who warrants that he/she is so authorised:

Name of signatory: Mike Smits

Capacity: Managing Director

SIGNED AT DURBAN THIS 15TH DAY OF DECEMBER 2023

CORALITE (PTY) LTD

WITNESS

By the authorised undersigned officer,
who warrants that he/she is so authorised:

Name of signatory: KYLE ADCOCK

Capacity: Managing Director DIRECTOR

Certified a true copy of the original which has no noticeable evidence of alterations by an unauthorised person.
Gesertifiseer 'n ware afskrif van die oorspronklike dokument, waarvan geen sigbare veranderinge deur 'n ongemagtigde persoon aangebring is nie.
Halley
REGISTRAR GENERAL

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2024 -02- 09
REGISTRAR MSS
WESTERN CAPE HIGH COURT

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IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION CAPE TOWN

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2023-07-28
Case no.: 10278/2023

On this 28th day of July 2023
BEFORE HIS LORDSHIP MR JUSTICE DOLAMO

In the application between:

TERTIARY EDUCATION AND RESEARCH NETWORK OF SOUTH AFRICA (RF) NPC Applicant

and

TENET TECHNOLOGY (PTY) LTD First Respondent

NATIONAL STUDENT FINANCIAL AID SCHEME Second Respondent

COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION Third Respondent

.ZA REGISTRY CONSORTIUM (PTY) LTD Fourth Respondent

UKHESHE TECHNOLOGIES (PTY) LTD Fifth Respondent

CORALITE (PTY) LTD Sixth Respondent

Ju DRAFT ORDER

Having heard counsel for the Applicant and the First and Sixth Respondents (collectively referred to below as "the Respondents"), without prejudice to the parties' rights and by agreement between the Applicant and the Respondents, an order is granted in the following terms:

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Healey
LAW OFFICES / KANIS / KANTOOR
REGISTRAR / GERECHTER

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2024-02-09
REGISTRAR 2
WESTERN CAPE HIGH COURT
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1. The matter is postponed for the hearing of the main application to the semi-urgent roll of Tuesday, 13 February 2024.

2. Pending the outcome and finalisation of the semi-urgent matter:
 - 2.1. The Respondents are required, within 10 business days, to change all online/internet references from Tenet to Tenet Technology wherever they appear, including on all websites and social media accounts (but specifically excluding the domain names tenetech.co.za and tenetnsfas.co.za).

 - 2.2. The Respondents shall, within 10 business days of the date of this order, publish an update to the mobile and web applications ("the apps") so as to remove therefrom any reference to the mark Tenet on the mobile and web app landing and content pages other than as provided for in 2.1 above.

 - 2.3. The Respondents shall, within 10 business days of the date of this order, commence the process (including obtaining any consent from the Second Respondent that may be necessary) of renaming the apps in the various app stores so as to remove therefrom any reference to the mark Tenet other than as provided for in 2.1 above (and provided that the Respondents may make use of Tenet Technology in such name) and shall furnish proof thereof to the Applicant's attorney of the commencement of such process and report on the progress of the process as and when reasonable requests ^{2023 02 07} do so are made by the Applicant or its attorney

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Gesertifiseer ^{2023 02 07} ware afskrif van die oorspronklike wat 'n geen sigbare veranderinge deur 'n ongemagtigde persoon aangebring is nie.
Kalley
REGISTERAR 2
WESTERN CAPE HIGH COURT

OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
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WESTERN CAPE HIGH COURT

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- 2.4. Within 10 business days the Respondents will cease all use of NSPAC which used together with Tenet and/or Tenet Technology (unless it is clear that they are independent entities from the manner in which they are used), as part of the Respondents' branding.
- 2.5. The Respondents undertake from a date no later than 10 business days after the date of this Order not to distribute any printed matter bearing the TENET trade mark not yet distributed; provided that the Respondents may make use of Tenet Technology in such material
- 3. The Respondents are required as soon as possible but by no later than close of business on Monday, 15 August 2023 to display and maintain until 13 February 2024 a statement on the First Respondent's website, confirming that Respondents are in no way connected or associated with the Applicant and requesting students to refrain from contacting the Applicant's offices in relation to the First Respondent's products.
- 4. The costs of the urgent application are reserved for determination by the Court hearing the semi-urgent matter.

BY ORDER OF THE COURT

2023-08-07

COURT REGISTRAR

Von Seidels
Box 8

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Healey
 LEGAL PRACTITIONER
 REGISTRAR

OFFICE OF THE CHIEF JUSTICE
 PRIVATE BAG 1100
 CAPE TOWN 8001

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REGISTRAR 2
 WESTERN CAPE HIGH COURT

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