



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 30 September 2009
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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POLARIS CAPITAL (PTY) LTD v THE REGISTRAR OF COMPANIES & ANOTHER

The Supreme Court of Appeal today dismissed an appeal against a judgment in the High Court, Cape of Good Hope in terms of which that court dismissed an application by the appellant for an order setting aside a decision and order of the Registrar of Companies that the appellant should change its name.

On 26 May 2003 the appellant, a South African registered company, formerly known as African Harvest Growth Asset Managers (Pty) Ltd changed its name to Polaris Capital (Pty) Ltd. Polaris Capital Management Inc a corporation incorporated in the USA objected to the name change.

Both Polaris Capital (Pty) Ltd and Polaris Capital Management Inc trade as equity managers but the one conducts its business in South Africa and the other conducts its

business in the USA. Both of them invest in South African equities and foreign equities.

Polaris Capital Management Inc was the first to use the name Polaris Capital in South Africa. Since 1996 it has marketed itself and made sales representations in South Africa to major commercial banks, investment and merchant banks, asset management funds, life insurance companies, public companies etc. On the evidence presented it became known to a substantial number of influential people in South Africa as an international equity manager.

The Registrar of Companies upheld the objection to the appellant's new name on the ground that the name was undesirable. He stated that Polaris Capital Management Inc had built a reputation and goodwill to its name since 1996, long before the appellant adopted its name Polaris Capital (Pty) Ltd in 2003. He concluded that 'since the names are almost identical, and since the parties are engaged in the same activities, confusion is likely to occur' and ordered the appellant to change its name. The SCA upheld the Registrar's decision and order.